

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) APRIL 27, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 23
 DEFENDANT.)
) PAGES 3960 - 4226

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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30 FEDERAL BUREAU OF INVESTIGATION
31 BY: MARIO C. SCUSSEL

32 UNITED STATES FOOD & DRUG
33 ADMINISTRATION
34 BY: GEORGE SCAVDIS

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SAN JOSE, CALIFORNIA

APRIL 27, 2022

P R O C E E D I N G S

(COURT CONVENED AT 9:05 A.M.)

(JURY IN AT 9:05 A.M.)

THE COURT: THANK YOU. GOOD MORNING.

PLEASE BE SEATED. THANK YOU AGAIN FOR YOUR COURTESY.

WE'RE BACK ON THE RECORD. OUR JURY IS PRESENT.

GOOD MORNING, LADIES AND GENTLEMEN.

ALL COUNSEL AND MR. BALWANI IS PRESENT.

AND MS. PETERSON IS BACK ON THE STAND. GOOD MORNING.

THE WITNESS: GOOD MORNING.

THE COURT: I'LL REMIND YOU THAT YOU ARE STILL UNDER
OATH.

**(GOVERNMENT'S WITNESS, LISA PETERSON, PREVIOUSLY WAS
SWORN.)**

THE COURT: BEFORE MR. COOPERSMITH CONTINUES, LADIES
AND GENTLEMEN OF THE JURY, I HAVE TO ASK YOU THAT QUESTION
AGAIN.

DURING THE BREAK, HAVE ANY OF YOU HAD CAUSE TO SEE, HEAR,
READ, DISCUSS, OR LEARN ANYTHING ABOUT THIS CASE?

IF SO, PLEASE RAISE YOUR HAND FOR ME.

I SEE NO HANDS.

THANK YOU VERY MUCH FOR THAT.

MR. COOPERSMITH, YOU HAVE ADDITIONAL QUESTIONS?

MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

09:05AM 1 THE COURT: PLEASE PROCEED. THANK YOU.

09:05AM 2 **CROSS-EXAMINATION (RESUMED)**

09:05AM 3 BY MR. COOPERSMITH:

09:05AM 4 Q. GOOD MORNING. MS. PETERSON.

09:06AM 5 A. GOOD MORNING.

09:06AM 6 Q. SO JUST TO START OFF HERE THIS MORNING, I THINK ON DIRECT

09:06AM 7 WHEN YOU WERE TALKING TO MR. LEACH YOU WERE ASKED SOME

09:06AM 8 QUESTIONS ABOUT THE RELATIONSHIP BETWEEN MR. BALWANI AND

09:06AM 9 MS. HOLMES.

09:06AM 10 DO YOU RECALL THAT?

09:06AM 11 A. YES.

09:06AM 12 Q. AND YOU SAID THAT YOU DIDN'T KNOW THAT THEY WERE IN A

09:06AM 13 RELATIONSHIP; IS THAT RIGHT?

09:06AM 14 A. CORRECT.

09:06AM 15 Q. AND YOU ALSO SAID THAT IF YOU HAD KNOWN THAT, YOU MIGHT

09:06AM 16 HAVE HAD SOME ADDITIONAL QUESTIONS.

09:06AM 17 DO YOU REMEMBER THAT?

09:06AM 18 A. YEAH. I BELIEVE IT WOULD HAVE SPURRED DISCUSSION, OF

09:06AM 19 COURSE.

09:06AM 20 Q. RIGHT. THAT'S WHAT YOU SAID ON DIRECT; RIGHT?

09:06AM 21 A. UH-HUH.

09:06AM 22 Q. AND I JUST WANT TO SHOW YOU A COUPLE OF EXHIBITS THAT ARE

09:06AM 23 ALREADY IN EVIDENCE.

09:06AM 24 OH, I'M SORRY.

09:06AM 25 ONE OF THE QUESTIONS THAT I THINK YOU HAD WAS YOU WOULD

09:06AM 1 WANT TO MAKE SURE THAT THE RIGHT PEOPLE WERE IN THE RIGHT
09:06AM 2 SEATS. I THINK THOSE WERE THE WORDS YOU USED; RIGHT?

09:06AM 3 A. YES.

09:06AM 4 Q. MEANING THAT MR. BALWANI WAS IN HIS POSITION BECAUSE OF
09:06AM 5 MERIT AS OPPOSED TO HE WAS DATING MS. HOLMES; RIGHT?

09:07AM 6 A. CORRECT.

09:07AM 7 Q. OKAY. I'D LIKE TO SHOW YOU THE FIRST EXHIBIT -- IT IS
09:07AM 8 ALREADY IN EVIDENCE, YOUR HONOR -- EXHIBIT 20510.

09:07AM 9 AND IF YOU'LL GO TO PAGE 4, MR. ALLEN.

09:07AM 10 THESE ARE BOARD MINUTES FROM AROUND THE TIME THAT
09:07AM 11 MR. BALWANI JOINED THE COMPANY.

09:07AM 12 DO YOU SEE WHERE IT SAYS, "THE BOARD DISCUSSED ADDING A
09:07AM 13 NEW DIRECTOR TO THE BOARD AND REVIEWED SEVERAL CANDIDATES FOR
09:07AM 14 CONSIDERATION"?

09:07AM 15 DO YOU SEE THAT?

09:07AM 16 A. YES.

09:07AM 17 Q. AND THEN IT SAYS, "AFTER DISCUSSION, THE BOARD UNANIMOUSLY
09:07AM 18 AGREED TO ELECT RAMESH 'SUNNY' BALWANI AS VICE CHAIRMAN."

09:07AM 19 DO YOU SEE THAT?

09:07AM 20 A. YES.

09:07AM 21 Q. GOING TO THE NEXT EXHIBIT, WHICH IS 20512.

09:08AM 22 AND THESE ARE BOARD MINUTES FROM AUGUST 10TH, 2010.

09:08AM 23 AND IF YOU GO TO PAGE 7, MR. ALLEN.

09:08AM 24 DO YOU SEE THERE'S A SECTION THERE CALLED "ADDITIONAL
09:08AM 25 COMPENSATION MATTERS; AMENDMENT OF BYLAWS," MS. PETERSON?

09:08AM 1 A. YES.

09:08AM 2 Q. AND THEN IT SAYS, "THE BOARD THEN APPROVED THE ADDITION OF

09:08AM 3 AN OPERATIONAL TITLE OF PRESIDENT AND COO FOR SUNNY BALWANI

09:08AM 4 AFTER DISCUSSING HIS PERFORMANCE AND CONTRIBUTIONS AND

09:08AM 5 OPERATIONAL ROLE."

09:08AM 6 DO YOU SEE THAT?

09:08AM 7 A. YES.

09:08AM 8 Q. OKAY. AND YOU UNDERSTAND THAT THE BOARD WAS COMPOSED OF

09:08AM 9 PEOPLE OTHER THAN MS. HOLMES; RIGHT?

09:08AM 10 A. YES.

09:08AM 11 Q. OKAY. OKAY. WHEN YOU FIRST STARTED WORKING ON THE RDV

09:08AM 12 INVESTMENT IN THERANOS, ONE OF THE FIRST THINGS YOU DID IS YOU

09:08AM 13 PERFORMED SOME GOOGLE SEARCHES; IS THAT RIGHT?

09:09AM 14 A. YES.

09:09AM 15 Q. AND YOU WERE TRYING TO FIND ANYTHING YOU COULD ABOUT

09:09AM 16 THERANOS THAT WAS IN PUBLIC; RIGHT?

09:09AM 17 A. YEAH. I WAS JUST TRYING TO GOOGLE AND FIND THINGS THAT

09:09AM 18 TALKED ABOUT THERANOS AND SPEECHES OF HERS.

09:09AM 19 Q. SO THINGS THAT YOU COULD FIND ON GOOGLE; RIGHT?

09:09AM 20 A. UH-HUH.

09:09AM 21 Q. SO THERE WERE SOME SPEECHES THAT SHE HAD ON YOUTUBE AND

09:09AM 22 THINGS LIKE THAT?

09:09AM 23 A. YES.

09:09AM 24 Q. OKAY. AND THEN YOU ALSO UNDERSTAND THAT THE THERANOS

09:09AM 25 WEBSITE WAS PUBLICLY AVAILABLE; RIGHT?

09:09AM 1 A. YES.

09:09AM 2 Q. AND ALSO THE WALGREENS WEBSITE; RIGHT?

09:09AM 3 A. YES.

09:09AM 4 Q. AND YOU LOOKED AT THE WALGREENS WEBSITE?

09:09AM 5 A. I DON'T RECALL.

09:09AM 6 Q. YOU DON'T RECALL ONE WAY OR THE OTHER?

09:09AM 7 A. I DON'T RECALL.

09:09AM 8 Q. OKAY. YOU MIGHT HAVE, OR YOU'RE SURE YOU DIDN'T?

09:09AM 9 A. I DON'T RECALL IF I DID OR NOT.

09:09AM 10 Q. OKAY. CLEAR ENOUGH.

09:09AM 11 AND THEN THE THERANOS WEBSITE, YOU LOOKED AT THAT; RIGHT?

09:09AM 12 A. I DID LOOK AT THAT. I DO REMEMBER LOOKING AT THE PRICE

09:09AM 13 LIST.

09:09AM 14 Q. AND SINCE YOU MENTIONED THAT, LET'S TAKE A LOOK AT

09:10AM 15 EXHIBIT 3741A WHICH IS ALREADY IN EVIDENCE.

09:10AM 16 AND WHEN YOU SAY -- I'M SORRY. I'LL WAIT FOR YOUR --

09:10AM 17 (PAUSE IN PROCEEDINGS.)

09:10AM 18 THE WITNESS: I DON'T SEE ANYTHING THAT IS 3. 37?

09:10AM 19 BY MR. COOPERSMITH:

09:10AM 20 Q. YES. CAN YOU SEE IT ON YOUR SCREEN, MS. PETERSON?

09:10AM 21 A. YES.

09:10AM 22 Q. OKAY. AND YOU SEE THE THERANOS, AND THERE'S A LIST OF

09:10AM 23 ASSAYS, AND THERE ARE PRICES NEXT TO EACH ONE?

09:10AM 24 A. YES.

09:10AM 25 Q. AND WHEN YOU SAY YOU LOOKED AT THE THERANOS PRICE LIST,

09:10AM 1 THAT'S WHAT YOU'RE TALKING ABOUT; RIGHT?

09:10AM 2 A. YES.

09:10AM 3 Q. AND THEN YOU SEE THAT NEXT TO EACH OF THE BLOOD TESTS THAT
09:10AM 4 ARE LISTED THERE OF THE DIFFERENT ASSAYS, THESE ACTUALLY ARE
09:10AM 5 PRICE LISTED; RIGHT?

09:10AM 6 A. YES.

09:10AM 7 Q. AND THAT WAS ONE OF THE THINGS THAT THERANOS WAS TRYING TO
09:11AM 8 DO, TO CREATE SOME PRICE TRANSPARENCY AROUND TESTING; RIGHT?

09:11AM 9 A. CORRECT.

09:11AM 10 Q. WE'LL GO BACK TO THAT IN A MINUTE.

09:11AM 11 BUT LET'S LOOK AT EXHIBIT 5805, WHICH IS ALREADY IN
09:11AM 12 EVIDENCE.

09:11AM 13 AND THIS IS FROM THE THERANOS WEBSITE, MS. PETERSON.

09:11AM 14 IF WE CAN GO TO PAGE 4, MR. ALLEN. AND IF WE BLOW UP "THE
09:11AM 15 ONLY THING WE WANT YOU TO FEEL IS BETTER."

09:11AM 16 DO YOU SEE THAT?

09:11AM 17 A. YES.

09:11AM 18 Q. AND THIS SAYS, "INSTEAD OF A BIG, INTIMIDATING NEEDLE, OUR
09:11AM 19 CERTIFIED PHLEBOTOMISTS CAN USE A TINY FINGERSTICK OR A
09:11AM 20 MICRO-SAMPLE FROM A VENOUS DRAW. OCCASIONALLY A VENIPUNCTURE
09:11AM 21 MAY BE REQUIRED BASED ON THE LAB ORDER, BUT THIS IS UNCOMMON,
09:11AM 22 AND OUR AIM IS TO ELIMINATE THAT SCENARIO ENTIRELY."

09:12AM 23 DO YOU SEE THAT?

09:12AM 24 A. YES.

09:12AM 25 Q. OKAY. SO THE WEBSITE TALKS ABOUT VENOUS DRAWS; RIGHT?

09:12AM 1 A. YES, BUT THEY NEVER DID.

09:12AM 2 Q. OKAY. OKAY. I'M JUST ASKING WHAT THE WEBSITE SAID.

09:12AM 3 A. YEAH.

09:12AM 4 Q. OKAY. AND THEN IF WE GO TO EXHIBIT 14207, I DON'T THINK
09:12AM 5 THAT'S IN EVIDENCE, SO LET'S JUST SHOW THAT ON MS. PETERSON'S
09:12AM 6 SCREEN.

09:12AM 7 AND I KNOW, MS. PETERSON, YOU SAID YOU COULDN'T QUITE
09:12AM 8 REMEMBER THE WALGREENS WEBSITE, BUT I WANT TO SHOW IT TO YOU TO
09:12AM 9 SEE IF IT JOGS YOUR MEMORY.

09:12AM 10 DO YOU RECOGNIZE THIS AS THE WALGREENS WEBSITE THAT
09:12AM 11 EXISTED WITH REGARD TO THERANOS?

09:12AM 12 A. NO.

09:12AM 13 Q. OKAY. SO LOOKING AT THIS WEB PAGE DOESN'T JOG YOUR
09:12AM 14 MEMORY?

09:12AM 15 A. NO.

09:12AM 16 Q. SO IT'S POSSIBLE THAT YOU NEVER GOOGLED THIS AT ALL OR
09:13AM 17 FOUND THIS ON GOOGLE?

09:13AM 18 A. IT'S POSSIBLE.

09:13AM 19 Q. OKAY. LET'S GO TO EXHIBIT 1113, WHICH IS ALREADY IN
09:13AM 20 EVIDENCE.

09:13AM 21 AND DO YOU RECOGNIZE THIS AS A PRESS RELEASE THAT WAS PUT
09:13AM 22 OUT BY WALGREENS AND THERANOS?

09:13AM 23 A. YES.

09:13AM 24 Q. OKAY. AND I NOTE THE DATE OF IT, SEPTEMBER 9TH, 2013, IS
09:13AM 25 PRIOR TO YOUR GETTING INVOLVED WITH WORKING ON THE THERANOS

09:13AM 1 INVESTMENT; CORRECT?

09:13AM 2 A. YES.

09:13AM 3 Q. AND DID YOU -- WHEN YOU WERE DOING YOUR GOOGLING, DID YOU
09:13AM 4 COME ACROSS THIS?

09:14AM 5 A. I DON'T RECALL SPECIFICALLY.

09:14AM 6 BUT I DO RECALL KNOWING THAT THE WALGREENS CONTRACT AND
09:14AM 7 STUFF WAS SIGNED AND LAUNCHING A YEAR BEFORE OUR INVESTMENT.

09:14AM 8 Q. OKAY. AND IF YOU LOOK AT THE FIRST PARAGRAPH THERE IN
09:14AM 9 THE -- I THINK IT'S THE LAST SENTENCE OF THE FIRST PARAGRAPH,
09:14AM 10 IT SAYS, "THE SAMPLES ARE EITHER TAKEN FROM A TINY FINGERSTICK
09:14AM 11 OR A MICRO-SAMPLE TAKEN FROM TRADITIONAL METHODS, ELIMINATING
09:14AM 12 THE NEED FOR LARGER NEEDLES AND NUMEROUS VIALS OF BLOOD
09:14AM 13 REQUIRED FOR MOST DIAGNOSTIC LAB TESTING."

09:14AM 14 DO YOU SEE THAT?

09:14AM 15 A. YES.

09:14AM 16 Q. AND YOU UNDERSTOOD THAT TRADITIONAL METHODS MEANS
09:14AM 17 VENOUS DRAWS?

09:14AM 18 A. AGAIN, THAT WAS NEVER DISCUSSED, SO IF I READ THIS OR -- I
09:14AM 19 DON'T RECALL.

09:14AM 20 Q. OKAY. AND I'M ASKING A DIFFERENT QUESTION.

09:14AM 21 DO YOU UNDERSTAND THAT TRADITIONAL METHODS MEANS
09:14AM 22 VENOUS DRAWS?

09:14AM 23 A. YEAH, I DO NOW. YES.

09:14AM 24 Q. OKAY. THAT'S WHAT YOU UNDERSTAND?

09:14AM 25 A. YES. BUT EVERY CONVERSATION WAS AROUND FINGERSTICK, SO --

09:15AM 1 Q. OKAY.

09:15AM 2 YOUR HONOR, I MOVE TO STRIKE HER ANSWER AS NONRESPONSIVE.

09:15AM 3 THE COURT: THE LAST ABOUT --

09:15AM 4 MR. COOPERSMITH: YES.

09:15AM 5 THE COURT: -- ABOUT EVERY CONVERSATION WAS ABOUT --

09:15AM 6 MR. COOPERSMITH: RIGHT. THAT WAS NOT MY QUESTION.

09:15AM 7 THE COURT: THE LAST ABOUT EVERY PART WAS -- EVERY

09:15AM 8 PART OF THE CONVERSATION WAS ABOUT FINGERSTICKS, THAT'S WHAT

09:15AM 9 YOU'RE ASKING TO BE STRICKEN?

09:15AM 10 MR. COOPERSMITH: RIGHT.

09:15AM 11 THE COURT: ALL RIGHT.

09:15AM 12 THAT PORTION, LADIES AND GENTLEMEN, IS STRICKEN AS

09:15AM 13 NONRESPONSIVE.

09:15AM 14 YOU CAN ASK ANOTHER QUESTION.

09:15AM 15 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:15AM 16 Q. OKAY. LET'S GO BACK TO THAT EXHIBIT THAT WE WERE JUST

09:15AM 17 LOOKING AT, WHICH IS EXHIBIT 3741A, MR. ALLEN.

09:15AM 18 OKAY. THIS WAS THE BLOOD TESTING MENU.

09:15AM 19 NOW, MS. PETERSON, YOU DESCRIBED IN YOUR TESTIMONY

09:15AM 20 YESTERDAY THAT YOU ATTENDED A MEETING AT THERANOS ON

09:15AM 21 OCTOBER 14TH, 2014; RIGHT?

09:15AM 22 A. CORRECT.

09:15AM 23 Q. AND AT THAT MEETING, NO ONE EVER TOLD YOU THAT MR. BALWANI

09:16AM 24 OR MS. HOLMES -- NO ONE EVER TOLD YOU SPECIFICALLY THAT ALL OF

09:16AM 25 THESE TESTS ON THIS MENU WERE BEING RUN ON THERANOS TECHNOLOGY;

09:16AM 1
09:16AM 2
09:16AM 3
09:16AM 4
09:16AM 5
09:16AM 6
09:16AM 7
09:16AM 8
09:16AM 9
09:16AM 10
09:16AM 11
09:16AM 12
09:17AM 13
09:17AM 14
09:17AM 15
09:17AM 16
09:17AM 17
09:17AM 18
09:17AM 19
09:18AM 20
09:18AM 21
09:18AM 22
09:18AM 23
09:18AM 24
09:18AM 25

CORRECT?

A. THEY CERTAINLY LED US TO BELIEVE THAT THERE WERE HUNDREDS OF TESTS THAT THEY WERE DOING, WHICH IS WHY I LOOKED AT THIS, BECAUSE I WAS TRYING TO GET A SENSE OF NOT ONLY THE PRICE, BUT HOW MANY TESTS THEY WERE PERFORMING.

Q. OKAY. YOU SAID THAT THEY LED YOU TO BELIEVE.

BUT MY QUESTION IS, NO ONE SPECIFICALLY TOLD YOU THAT ALL OF THESE TESTS WERE RUNNING ON THERANOS TECHNOLOGY; CORRECT?

A. NO. I WOULD SAY -- I WOULD DISAGREE WITH THAT. THEY TOLD US ALL OF THEIR TESTS WERE BEING RUN ON THEIR ANALYZER.

Q. OKAY. I'D LIKE TO REFER YOU TO AN EXHIBIT YOU SHOULD HAVE IN YOUR BINDER. IT'S EXHIBIT 28448.

OKAY. DO YOU HAVE THAT, MS. PETERSON?

A. YES.

Q. AND IF YOU COULD TURN TO PAGE 68, PLEASE.

DO YOU HAVE THAT, MS. PETERSON?

A. YES.

Q. OKAY. AND THIS IS TESTIMONY THAT YOU GAVE IN A GRAND JURY PROCEEDING; CORRECT?

A. YES.

Q. AND YOU SWORE UNDER OATH TO TELL THE TRUTH?

A. YES.

Q. AND YOU KNEW THAT YOU WERE SUPPOSED TO TELL THE TRUTH; RIGHT?

A. YES.

09:18AM 1 Q. AND YOU WERE ASKED QUESTIONS AT THAT GRAND JURY SESSION;
09:18AM 2 RIGHT?
09:18AM 3 A. YES.
09:18AM 4 Q. IT WAS A VERY FORMAL SORT OF SESSION; RIGHT?
09:18AM 5 A. YES.
09:18AM 6 Q. SOLEMN EVEN; RIGHT?
09:18AM 7 A. IT WAS A LONG TIME AGO, YEAH.
09:18AM 8 Q. OKAY. IT WAS IN 2018?
09:18AM 9 A. YES.
09:18AM 10 Q. AND YOU WERE ASKED A QUESTION BY ONE OF THE JURORS, RIGHT,
09:18AM 11 ON LINE 23 ON PAGE 68?
09:18AM 12 A. THAT'S A STATEMENT BY SOMEONE ELSE.
09:18AM 13 I GUESS I'M MISUNDERSTANDING THE QUESTION.
09:18AM 14 Q. OKAY. I'M JUST GOING TO DIRECT YOU TO LINE 23 ON PAGE 68,
09:19AM 15 AND THE JUROR ASKED THE QUESTION: WELL, I DON'T HEAR --
09:19AM 16 MR. LEACH: YOUR HONOR, OBJECTION. HEARSAY. THIS
09:19AM 17 IS NOT PROPER.
09:19AM 18 THE COURT: SUSTAINED.
09:19AM 19 YOU CAN DO THIS A DIFFERENT WAY.
09:19AM 20 MR. COOPERSMITH: OKAY, YOUR HONOR.
09:19AM 21 Q. OKAY. MS. PETERSON, YOU WERE ASKED A QUESTION BY ONE OF
09:19AM 22 THE GRAND JURORS; CORRECT?
09:19AM 23 PAGE 68, LINE 23.
09:20AM 24 A. WHAT I'M READING, IT'S JUST ONE LINE.
09:20AM 25 Q. OKAY.

09:20AM 1 A. IT'S NOT WHAT I -- IT'S NOT ME TALKING.

09:20AM 2 Q. OKAY, MS. PETERSON. I'LL GET THERE.

09:20AM 3 YOUR HONOR, I THINK WHAT WOULD BE EASIER IS, PURSUANT TO
09:20AM 4 RULE 801 AND RULE 613, I WOULD LIKE TO JUST PUT UP THE
09:20AM 5 TRANSCRIPT FOR MS. PETERSON SO WE CAN ALL SEE IT.

09:20AM 6 AND I THINK THE --

09:20AM 7 THE COURT: CAN YOU ASK THE QUESTION ABOUT DID SHE
09:20AM 8 MAKE A STATEMENT AND CLASSIC 613? IS THERE ANOTHER WAY THAT
09:20AM 9 YOU CAN DO THAT?

09:20AM 10 MR. COOPERSMITH: I WILL TRY, YOUR HONOR, SURE.

09:20AM 11 THE COURT: OKAY.

09:20AM 12 BY MR. COOPERSMITH:

09:20AM 13 Q. MS. PETERSON, WE WERE TALKING ABOUT -- JUST A FEW MINUTES
09:20AM 14 AGO BEFORE I GOT INTO THIS TRANSCRIPT, YOU SAID THAT YOU WERE
09:20AM 15 TOLD THAT, SPECIFICALLY THAT THERANOS WAS RUNNING ALL OF THESE
09:20AM 16 BLOOD TESTS ON ITS THERANOS DEVICES; CORRECT?

09:20AM 17 A. I SAID THAT IN THIS TRANSCRIPT, OR I SAID THAT I --

09:20AM 18 Q. NO. JUST A FEW MINUTES AGO WHEN I ASKED YOU THE QUESTION.

09:21AM 19 A. IT WAS OUR UNDERSTANDING THAT THEY WERE DOING HUNDREDS OF
09:21AM 20 TESTS ON THEIR ANALYZER, YES.

09:21AM 21 Q. AND I'M TRYING TO SEPARATE WHAT YOUR UNDERSTANDING WAS
09:21AM 22 VERSUS WHAT YOU WERE TOLD.

09:21AM 23 DO YOU UNDERSTAND?

09:21AM 24 A. THEY NEVER, EVER MENTIONED TO US THAT THEY WERE DOING
09:21AM 25 VENOUS DRAWS.

09:21AM 1 Q. OKAY.

09:21AM 2 A. VERBALLY, EVER.

09:21AM 3 Q. MY QUESTION ISN'T THAT.

09:21AM 4 A. OKAY.

09:21AM 5 Q. SO LET ME START AGAIN.

09:21AM 6 A. OKAY.

09:21AM 7 Q. AGAIN, I'M TRYING TO SEPARATE WHAT YOU UNDERSTOOD AND WHAT

09:21AM 8 YOU WERE TOLD.

09:21AM 9 A. OKAY.

09:21AM 10 Q. AND I UNDERSTAND YOUR TESTIMONY AS YOU UNDERSTOOD THAT

09:21AM 11 THEY WERE DOING ALL OF THEIR TESTS ON THERANOS TECHNOLOGY;

09:21AM 12 RIGHT?

09:21AM 13 A. YES.

09:21AM 14 Q. THAT'S WHAT YOU'RE SAYING THAT YOU UNDERSTOOD?

09:21AM 15 A. YES.

09:21AM 16 Q. BUT YOU WERE NEVER SPECIFICALLY TOLD THAT BY ANYONE FROM

09:21AM 17 THERANOS?

09:21AM 18 A. WHEN THEY SAID THEY WERE DOING HUNDREDS OF TESTS ON THEIR

09:21AM 19 ANALYZER, I THINK THAT'S TELLING ME THAT THEY DO ALL OF THEIR

09:21AM 20 TESTS ON THEIR ANALYZER.

09:21AM 21 Q. SO IS IT YOUR TESTIMONY TODAY UNDER OATH THAT YOU RECEIVED

09:21AM 22 A SPECIFIC STATEMENT FROM MR. BALWANI THAT EVERY SINGLE TEST

09:22AM 23 THAT THEY WERE DOING WAS RUN ON A THERANOS ANALYZER?

09:22AM 24 A. I DON'T RECALL SPECIFICALLY WHO SAID IT, BUT THAT'S --

09:22AM 25 THAT IS WHAT WE WERE TOLD.

09:22AM 1 Q. OKAY. YOU DON'T RECALL SPECIFICALLY WHO SAID IT?

09:22AM 2 A. NO.

09:22AM 3 Q. OKAY. AND SPECIFICALLY, WHAT IS IT THAT YOU'RE SAYING

09:22AM 4 THAT YOU WERE TOLD BY SOMEONE WHO YOU CAN'T IDENTIFY?

09:22AM 5 A. I -- DEFINITELY ELIZABETH SAID THOSE THINGS.

09:22AM 6 I DON'T KNOW IF MR. BALWANI DID OR NOT, BUT HE WAS IN THE

09:22AM 7 ROOM THE ENTIRE MEETING THAT WE HAD AND DIDN'T CORRECT HER.

09:22AM 8 SO I DON'T RECALL SPECIFICALLY WHO SAID WHAT.

09:22AM 9 Q. AND WHEN YOU SAY "THOSE THINGS," SPECIFICALLY WHAT IS THE

09:22AM 10 STATEMENT THAT YOU'RE REFERRING TO?

09:22AM 11 A. THE COMMENT THAT YOU'RE TRYING TO GET ME TO SAY THAT NO

09:22AM 12 ONE EXACTLY SAID IT.

09:22AM 13 Q. I'M JUST ASKING FOR YOUR WORDS, BEST AS YOU CAN RECALL,

09:22AM 14 WHAT IS THE STATEMENT THAT YOU ARE SAYING?

09:22AM 15 A. THAT WE PERFORM HUNDREDS OF TESTS ON OUR THERANOS

09:22AM 16 EQUIPMENT.

09:22AM 17 Q. OKAY. AND THAT -- DOES IT ALSO INCLUDE THAT ALL OF THE

09:22AM 18 TESTS THAT THERANOS WAS RUNNING WERE ALL CONDUCTED ON THERANOS

09:23AM 19 EQUIPMENT?

09:23AM 20 A. YES.

09:23AM 21 Q. OKAY.

09:23AM 22 YOUR HONOR, I THINK WE HAVE AN INCONSISTENCY FROM THE

09:23AM 23 TRANSCRIPT, AND I'D LIKE TO PUBLISH IT.

09:23AM 24 THE COURT: YOU WOULD LIKE TO PUBLISH PAGE 68,

09:23AM 25 LINE 23, THROUGH PAGE 69, LINE 11?

09:23AM 1 MR. COOPERSMITH: YES, YOUR HONOR.

09:23AM 2 THE COURT: ALL RIGHT. WE CAN PUBLISH THAT.

09:23AM 3 (PUBLISHED.)

09:23AM 4 BY MR. COOPERSMITH:

09:23AM 5 Q. OKAY. SO THIS IS THE STATEMENT I WAS REFERRING TO --

09:23AM 6 THE COURT: YES.

09:23AM 7 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:23AM 8 Q. PAGE 68, LINE 23, DO YOU SEE THERE'S A GRAND JUROR WHO
09:23AM 9 ASKS, "WELL, I DON'T HEAR THAT THERE WAS A STATEMENT THAT THE
09:23AM 10 ACTUAL 150 OR 200 TESTS WERE ALL CONDUCTED," AND WE GO TO THE
09:23AM 11 NEXT PAGE, AND THEN YOU STARTED TALKING, "I CAN'T RECALL IS
09:23AM 12 HER --"

09:23AM 13 BUT THE GRAND JUROR FINISHES THE QUESTION "-- USING THAT
09:23AM 14 EQUIPMENT. I DON'T HEAR THAT STATEMENT."

09:24AM 15 MR. ALLEN, IF WE CAN PUT THE FIRST PAGE UP AT THE SAME
09:24AM 16 TIME. THANK YOU. JUST SO WE CAN SEE THE WHOLE QUESTION.

09:24AM 17 SO THE QUESTION IS "WELL, I DON'T HEAR THAT THERE WAS EVER
09:24AM 18 A STATEMENT THAT THE ACTUAL 150 OR 200 TESTS WERE ALL CONDUCTED
09:24AM 19 USING THAT EQUIPMENT. I DON'T HEAR THAT STATEMENT."

09:24AM 20 AND YOUR ANSWER WAS: "I DON'T RECALL A SPECIFIC, YOU
09:24AM 21 KNOW, SHE SAID THIS ON THIS DATE. BUT WE ABSOLUTELY, IT WAS
09:24AM 22 OUR UNDERSTANDING FOR SURE AFTER EVERYTHING WE READ AND WHAT WE
09:24AM 23 HEARD IS THAT THEIR COMPANY WAS -- WAS A COMPANY THAT WAS DOING
09:24AM 24 150 TO 200 PLUS TESTS ON THEIR EQUIPMENT THAT THEY MANUFACTURED
09:24AM 25 USING MICRO-SAMPLES OF BLOOD IN THESE 'NANOTAINERS' IN THEIR

09:24AM 1 BOX. THERE WAS NEVER -- IT WAS NEVER A FOCAL POINT THAT THEY
09:24AM 2 WERE DOING IT ANY OTHER WAY."

09:24AM 3 DO YOU SEE THAT?

09:24AM 4 A. YES.

09:24AM 5 Q. AND SO IT WAS YOUR UNDERSTANDING THAT THEY WERE DOING IT
09:24AM 6 THAT WAY?

09:24AM 7 A. YES.

09:24AM 8 Q. BUT YOU DON'T RECALL A STATEMENT THAT WAS MADE TO YOU
09:25AM 9 ABOUT THAT POINT; RIGHT?

09:25AM 10 MR. LEACH: OBJECTION, YOUR HONOR. ASKED AND
09:25AM 11 ANSWERED.

09:25AM 12 THE COURT: I THINK SHE ANSWERED THE QUESTION.
09:25AM 13 BY MR. COOPERSMITH:

09:25AM 14 Q. OKAY. AND YOUR TESTIMONY THAT WE'RE REFERRING TO IN THE
09:25AM 15 EXHIBIT ON THE SCREEN, THAT WAS TRUTHFUL TESTIMONY?

09:25AM 16 A. YES.

09:25AM 17 Q. OKAY. OKAY. YOU MENTIONED ON DIRECT, MS. PETERSON, THAT
09:25AM 18 YOU HAD REVIEWED AN S.E.C. FILING FROM WALGREENS; IS THAT
09:25AM 19 CORRECT?

09:25AM 20 A. YES.

09:25AM 21 Q. AND I THINK YOU MIGHT HAVE SAID IT WAS A 10-K?

09:25AM 22 A. YES, FROM 2013, I THINK, THE YEAR BEFORE OUR INVESTMENT.

09:25AM 23 Q. RIGHT. THANK YOU.

09:25AM 24 IF YOU CAN TAKE A LOOK AT EXHIBIT 20433. IT WILL JUST
09:25AM 25 COME UP ON YOUR SCREEN, OR IF YOU CAN FIND IT IN THE BINDERS,

09:25AM 1 IT'S NOT IN EVIDENCE YET.

09:26AM 2 A. OKAY.

09:26AM 3 Q. AND YOU SEE THAT THIS IS A FORM 8-K FILED BY WALGREENS?

09:26AM 4 A. YES.

09:26AM 5 Q. AND WHAT YOU LOOKED AT COULD HAVE BEEN AN 8-K?

09:26AM 6 A. MY IN-HOUSE COUNSEL PULLED THIS AND I KNOW THERE WAS AN

09:26AM 7 EMAIL. I DIDN'T LOOK AT THE FORM -- I DIDN'T LOOK THROUGH

09:26AM 8 THIS, HE DID. AND HE SENT AN EMAIL TO JERRY AND I WITH A

09:26AM 9 HIGHLIGHT OF THE -- ONE LINE IN THE WHATEVER IT WAS. IT WAS

09:26AM 10 THE YEAR-END REPORT FOR WALGREENS THAT SAID THAT THEY WERE

09:26AM 11 GOING TO -- THEY WERE WORKING ON THERANOS AND WORKING ON THE

09:26AM 12 ROLLOUT OF THAT.

09:26AM 13 Q. OKAY. YOU JUST GOT KIND OF A SNIPPET FROM YOUR IN-HOUSE
09:26AM 14 COUNSEL?

09:26AM 15 A. CORRECT.

09:26AM 16 Q. OKAY. IF YOU COULD TURN IN THE EXHIBIT, OR MAYBE IT WILL
09:26AM 17 JUST COME UP ON YOUR SCREEN, TO PAGE 9 OF THE EXHIBIT.

09:27AM 18 AND DO YOU SEE THERE ARE BULLET POINTS THERE,

09:27AM 19 MS. PETERSON?

09:27AM 20 A. YES.

09:27AM 21 Q. AND IF YOU GO TO THE THIRD BULLET POINT ON THE PAGE, AND
09:27AM 22 JUST READ IT TO YOURSELF.

09:27AM 23 A. YES.

09:27AM 24 Q. OKAY. AND THAT'S THE SNIPPET THAT YOU SAW?

09:27AM 25 A. IT'S SOMETHING ALONG THOSE LINES, YES.

09:27AM 1 Q. OKAY.

09:27AM 2 YOUR HONOR, WE OFFER THE FIRST PAGE OF EXHIBIT 20433 AND

09:27AM 3 PAGE 9.

09:27AM 4 MR. LEACH: YOUR HONOR, I THINK THE WHOLE EXHIBIT

09:27AM 5 SHOULD COME IN. NO OBJECTION TO THOSE PAGES, BUT I THINK THE

09:27AM 6 WHOLE EXHIBIT SHOULD COME IN.

09:27AM 7 MR. COOPERSMITH: I DON'T HAVE ANY OBJECTION TO

09:27AM 8 THAT, YOUR HONOR.

09:27AM 9 THE COURT: ALL RIGHT. THE ENTIRETY OF THE EXHIBIT

09:27AM 10 WILL BE ADMITTED, AND IT MAY BE PUBLISHED.

09:27AM 11 (DEFENDANT'S EXHIBIT 20433 WAS RECEIVED IN EVIDENCE.)

09:27AM 12 BY MR. COOPERSMITH:

09:27AM 13 Q. JUST TO ORIENT OURSELVES, MS. PETERSON, WE'LL GO TO THE

09:28AM 14 FIRST PAGE, AND DO YOU SEE THAT'S THE 8-K, FIRST PAGE OF THE

09:28AM 15 DOCUMENT?

09:28AM 16 A. YES. IS THERE A DATE?

09:28AM 17 Q. THERE SHOULD BE.

09:28AM 18 A. IT'S DECEMBER OF '13.

09:28AM 19 Q. DO YOU SEE THAT NOW?

09:28AM 20 A. YES.

09:28AM 21 Q. OKAY. AND IF YOU GO TO PAGE 9, AND IF WE CAN JUST

09:28AM 22 HIGHLIGHT THAT THIRD BULLET.

09:28AM 23 AND THEN YOU SEE IT SAYS, "TAKING THE NEXT STEP IN

09:28AM 24 THERANOS AND WALGREENS PLANNED NATIONAL ROLLOUT OF THERANOS

09:28AM 25 WELLNESS CENTERS BY OPENING TWO NEW CENTERS AT WALGREENS STORES

09:28AM 1 IN THE PHOENIX AREA. A THERANOS WELLNESS CENTER IS ALSO
09:28AM 2 LOCATED AT A WALGREENS STORE IN PALO ALTO, CALIFORNIA."

09:28AM 3 DO YOU SEE THAT?

09:28AM 4 A. YES.

09:28AM 5 Q. AND SO THAT STATEMENT SAYS THAT THERE IS ONE WALGREENS
09:28AM 6 STORE IN PALO ALTO, AND THERE'S SOME MORE IN THE PHOENIX,
09:28AM 7 ARIZONA AREA; RIGHT?

09:28AM 8 A. YES.

09:28AM 9 Q. AND THIS IS WALGREENS SAYING THAT? YOU UNDERSTAND THAT?

09:28AM 10 A. YES.

09:29AM 11 Q. OKAY. YOU CAN PUT THAT ASIDE.

09:29AM 12 JUROR: JUDGE, ARE WE SUPPOSED TO SEE THIS?

09:29AM 13 THE COURT: IT SHOULD BE ADMITTED.

09:29AM 14 THE CLERK: APOLOGIES.

09:29AM 15 THE COURT: IS IT ON THE SCREEN NOW?

09:29AM 16 JUROR: NO.

09:29AM 17 THE COURT: OH, SORRY.

09:29AM 18 THANK YOU, MADAM JUROR. GIVE US A SECOND.

09:29AM 19 IS IT UP NOW?

09:29AM 20 JUROR: YES.

09:29AM 21 MR. COOPERSMITH: AND I'M SORRY, I'LL HAVE TO GO
09:29AM 22 BACK OVER THIS, YOUR HONOR.

09:29AM 23 THE COURT: OF COURSE. OF COURSE.

09:29AM 24 BY MR. COOPERSMITH:

09:29AM 25 Q. SORRY ABOUT THAT, MS. PETERSON, BUT WE NEED THE JURORS TO

09:29AM 1 SEE IT.

09:29AM 2 A. OF COURSE.

09:29AM 3 Q. AND NOW THAT EVERYONE HAS IT ON THE SCREEN AND I'M LOOKING

09:29AM 4 AT THE THIRD BULLET -- ACTUALLY LET'S GO TO THE FIRST PAGE SO

09:29AM 5 EVERYONE CAN SEE THE DOCUMENTS.

09:29AM 6 THIS IS A WALGREENS REPORT TO THE S.E.C.; CORRECT?

09:29AM 7 A. CORRECT.

09:29AM 8 Q. AND YOU SEE THERE'S A DATE ON IT, WHICH IS HIGHLIGHTED?

09:29AM 9 A. YES.

09:29AM 10 Q. OKAY. AND NOW IF YOU GO TO THAT PAGE 9, AND YOU SEE

09:30AM 11 WALGREENS DISCLOSING THIS PARTICULAR INFORMATION; RIGHT?

09:30AM 12 A. YES.

09:30AM 13 Q. AND THIS IS WALGREENS MAKING THAT DISCLOSURE; CORRECT?

09:30AM 14 A. CORRECT.

09:30AM 15 Q. OKAY. ALL RIGHT. WE CAN PUT THAT ASIDE.

09:30AM 16 OKAY. DURING YOUR TESTIMONY YESTERDAY, MS. PETERSON, YOU

09:30AM 17 REFERRED TO SOME BINDERS THAT YOU LOOKED AT IN EARLY OCTOBER OF

09:30AM 18 2014?

09:30AM 19 A. YES.

09:30AM 20 Q. AND THE BINDERS WERE SENT TO MR. TUBERGEN?

09:30AM 21 A. CORRECT.

09:30AM 22 Q. AND THEN YOU WENT TO HIS OFFICE AND RETRIEVED THE BINDERS

09:30AM 23 FROM HIM?

09:30AM 24 A. YES. I MADE A COPY.

09:30AM 25 Q. RIGHT. SO YOU WENT TO THE COPY MACHINE AND MADE COPIES?

09:31AM 1 A. YES.

09:31AM 2 Q. YOU PERSONALLY MADE THE COPIES?

09:31AM 3 A. YES.

09:31AM 4 Q. AND MR. TUBERGEN HAD NOT LOOKED AT THE BINDERS?

09:31AM 5 A. NO. HE -- I --

09:31AM 6 MR. LEACH: OBJECTION, YOUR HONOR. CALLS FOR

09:31AM 7 SPECULATION.

09:31AM 8 THE WITNESS: I CAN'T SAY WHETHER HE LOOKED AT THEM.

09:31AM 9 THE COURT: EXCUSE ME. THERE'S AN OBJECTION.

09:31AM 10 THE WITNESS: SORRY.

09:31AM 11 THE COURT: SO DO YOU WANT TO --

09:31AM 12 MR. COOPERSMITH: I'LL ASK A DIFFERENT QUESTION.

09:31AM 13 THE COURT: WHY DON'T YOU ASK IT IN A DIFFERENT WAY?

09:31AM 14 THE RESPONSE IS STRICKEN.

09:31AM 15 BY MR. COOPERSMITH:

09:31AM 16 Q. SO FROM WHAT YOU KNOW, YOU DON'T KNOW WHETHER MR. TUBERGEN

09:31AM 17 LOOKED AT THE BINDERS OR NOT; RIGHT?

09:31AM 18 A. I DON'T KNOW.

09:31AM 19 Q. BUT YOU MADE A COPY?

09:31AM 20 A. YES.

09:31AM 21 Q. AND SO YOU COULD LOOK AT THEM?

09:31AM 22 A. YES, AND I LEFT HIM THE ORIGINALS.

09:31AM 23 Q. AND YOU DID LOOK AT THE COPY YOU MADE; RIGHT?

09:31AM 24 A. YES.

09:31AM 25 Q. AND THEN THERE WERE TWO BINDERS?

09:31AM 1 A. YES.

09:31AM 2 Q. AND ONE OF THEM WAS THE MATERIAL THAT YOU REVIEWED WITH

09:31AM 3 MR. LEACH YESTERDAY?

09:31AM 4 A. YES.

09:31AM 5 Q. AND WE'LL LOOK AT THAT SOME MORE IN A BIT.

09:31AM 6 BUT THERE WAS A SECOND BINDER; RIGHT?

09:31AM 7 A. YES.

09:31AM 8 Q. AND THE SECOND BINDER HAD DATA IN IT; RIGHT?

09:31AM 9 A. YES, IT WAS VERY SCIENTIFIC.

09:31AM 10 Q. SCIENTIFIC, TECHNICAL DATA; RIGHT?

09:31AM 11 A. YES.

09:31AM 12 Q. BUT -- AND THERANOS SENT THAT TO YOU?

09:32AM 13 A. YES.

09:32AM 14 Q. OR SENT IT TO RDV; RIGHT?

09:32AM 15 A. CORRECT.

09:32AM 16 Q. AND YOU COULD HAVE DONE ANYTHING THAT YOU WANTED WITH THAT

09:32AM 17 DATA IF YOU HAD SO CHOSEN; RIGHT?

09:32AM 18 A. CORRECT.

09:32AM 19 Q. AND YOU NEVER, LIKE, HIRED ANY CONSULTANTS OR OTHERWISE

09:32AM 20 TRIED TO DIG INTO THE SCIENTIFIC DATA; RIGHT?

09:32AM 21 MR. LEACH: OBJECTION. RELEVANCE. 403.

09:32AM 22 THE COURT: ARE YOU -- IS THIS THE LAST QUESTION IN

09:32AM 23 THIS AREA?

09:32AM 24 MR. COOPERSMITH: ON THIS PARTICULAR TECHNICAL

09:32AM 25 BINDER ISSUE, YEAH.

09:32AM 1 THE COURT: ALL RIGHT. YOU CAN ASK ANOTHER
09:32AM 2 QUESTION.
09:32AM 3 MR. COOPERSMITH: OKAY.
09:32AM 4 THE COURT: SO I'LL ALLOW THAT LAST QUESTION.
09:32AM 5 MR. COOPERSMITH: WAS THERE AN ANSWER? I'M NOT SURE
09:32AM 6 I HEARD IT.
09:32AM 7 THE COURT: NO. SHE CAN ANSWER.
09:32AM 8 THE WITNESS: NO.
09:32AM 9 MR. COOPERSMITH: THANK YOU, YOUR HONOR.
09:32AM 10 Q. BUT GOING TO THE FIRST BINDER, THAT'S WHAT YOU LOOKED
09:32AM 11 THROUGH TO TRY TO UNDERSTAND WHAT THERANOS WAS SENDING; RIGHT?
09:32AM 12 A. YES.
09:32AM 13 Q. OKAY. NOW, THE SAME DAY THAT YOU TOOK THE BINDERS AND
09:33AM 14 MADE A COPY, THAT WAS THE SAME DAY THAT YOU HAD A CALL WITH
09:33AM 15 MS. HOLMES?
09:33AM 16 A. I BELIEVE SO.
09:33AM 17 Q. AND MR. TUBERGEN WAS ON THE LINE?
09:33AM 18 A. YES.
09:33AM 19 Q. AND AT THE TIME THAT YOU HAD THE CALL, YOU HAD NOT ALREADY
09:33AM 20 LOOKED AT THE BINDERS?
09:33AM 21 A. I BELIEVE I FLIPPED THROUGH THEM TO TRY TO GET A SENSE OF
09:33AM 22 SOME HIGH-LEVEL QUESTIONS THAT WE WANTED TO ASK FIRST.
09:33AM 23 Q. OKAY. AND FLIPPING THROUGH IT MEANS LOOKING AT IT BRIEFLY
09:33AM 24 WITHOUT GETTING INTO DETAIL ABOUT IT? IS THAT WHAT YOU'RE
09:33AM 25 SAYING?

09:33AM 1 A. ENOUGH TO BE PREPARED TO HAVE A PHONE CALL, YES.

09:33AM 2 Q. OKAY. AND IS THAT HOW YOU WERE ABLE TO FORMULATE THE

09:33AM 3 QUESTIONS THAT YOU WANTED TO ASK MS. HOLMES IN THAT CALL?

09:33AM 4 A. YES.

09:33AM 5 Q. OKAY. IF WE COULD TAKE A LOOK AT EXHIBIT 2015, WHICH IS

09:33AM 6 ALREADY IN EVIDENCE.

09:34AM 7 THESE ARE THE NOTES THAT YOU TOOK OF THAT CALL WITH

09:34AM 8 MS. HOLMES?

09:34AM 9 A. YES.

09:34AM 10 Q. AND MR. TUBERGEN WAS ALSO ON THE CALL; CORRECT?

09:34AM 11 A. YES.

09:34AM 12 Q. AND MR. BALWANI WAS NOT ON THE CALL?

09:34AM 13 A. NOT THAT I KNOW OF.

09:34AM 14 Q. OKAY. WELL, NO ONE EVER ANNOUNCED HIM OR --

09:34AM 15 A. CORRECT.

09:34AM 16 Q. RIGHT. OKAY.

09:34AM 17 AND THEN IF YOU GO THROUGH IT, YOU SEE THERE'S A BOLD AT

09:34AM 18 THE TOP, "WHAT IS THE LONG-TERM VISION OF THERANOS?"

09:34AM 19 DO YOU SEE THAT?

09:34AM 20 A. YES.

09:34AM 21 Q. AND THAT WAS A QUESTION THAT YOU HAD; RIGHT?

09:34AM 22 A. YES.

09:34AM 23 Q. AND YOU AND MR. TUBERGEN WERE INTERESTED IN WHAT THE

09:34AM 24 LONG-TERM VISION OF THERANOS WAS?

09:34AM 25 A. YES, WE WANTED TO HEAR HER TELL US AGAIN -- HE ALREADY

09:34AM 1 HEARD IT, I HAD NOT -- WHAT THEIR VISION OF THE COMPANY WAS.

09:34AM 2 Q. AND LONG-TERM VISION MEANS YEARS OUT INTO THE FUTURE?

09:34AM 3 A. WHERE THEY ARE NOW AND WHERE THEY ARE GOING, YES.

09:34AM 4 Q. INCLUDING YEARS OUT INTO THE FUTURE?

09:35AM 5 A. SURE.

09:35AM 6 Q. AND THEN IT SAYS BELOW THAT, THERE'S A LINE THAT READS,

09:35AM 7 "START WITH A LASER-FOCUS ON COMMERCIAL LAB MARKET

09:35AM 8 (\$180 BILLION), AND THEN DIRECT TO CONSUMER MARKETS."

09:35AM 9 DO YOU SEE THAT?

09:35AM 10 A. YES.

09:35AM 11 Q. AND YOU UNDERSTOOD FROM WHAT MS. HOLMES HAD TOLD YOU THAT

09:35AM 12 THE START THAT THERANOS WAS TRYING TO ENGAGE IN WAS TO HAVE A

09:35AM 13 LASER-FOCUS ON THE COMMERCIAL LAB MARKET; RIGHT?

09:35AM 14 A. THAT WAS WHERE THEY WERE GOING TO BEGIN, YES.

09:35AM 15 Q. FOR EXAMPLE, THE WALGREENS PROGRAM?

09:35AM 16 A. YES.

09:35AM 17 Q. OKAY. AND THEN BELOW THAT IT HAS WALGREENS.

09:35AM 18 DO YOU SEE THAT?

09:35AM 19 A. YES.

09:35AM 20 Q. AND THEN IT HAS INSURANCE AND HOSPITAL.

09:35AM 21 DO YOU SEE THAT?

09:35AM 22 A. YES.

09:35AM 23 Q. AND THEN IT HAS PHARMA.

09:35AM 24 DO YOU SEE THAT?

09:35AM 25 A. YES.

09:35AM 1 Q. AND IT SAYS, "MARKET: TBD."

09:35AM 2 DO YOU SEE THAT?

09:35AM 3 A. YES.

09:35AM 4 Q. AND THAT MEANS TO BE DETERMINED?

09:35AM 5 A. YES.

09:35AM 6 Q. AND THEN IF YOU GO DOWN THE PAGE, IT SAYS WALGREENS.

09:35AM 7 SO YOU HAD -- AND IT'S IN BOLD. SO THAT'S YOUR QUESTION

09:36AM 8 OR SERIES OF QUESTIONS; RIGHT?

09:36AM 9 A. YES. YES.

09:36AM 10 Q. SO YOU HAD A PARTICULAR INTEREST IN WHAT WAS GOING ON WITH

09:36AM 11 WALGREENS; RIGHT?

09:36AM 12 A. YES, THE CONTRACTS WERE PARAMOUNT TO OUR INVESTMENT

09:36AM 13 DECISION.

09:36AM 14 Q. RIGHT. THE WALGREENS PROGRAM WAS, LIKE, REALLY IMPORTANT

09:36AM 15 TO MAKING THE DECISION; RIGHT?

09:36AM 16 A. YES.

09:36AM 17 Q. OKAY. AND THEN BELOW THAT IT SAYS "PROJECTIONS BASED ON

09:36AM 18 900 STORES."

09:36AM 19 DO YOU SEE THAT?

09:36AM 20 A. YES.

09:36AM 21 Q. AND YOU UNDERSTOOD THAT FINANCIAL INFORMATION, AND WE'LL

09:36AM 22 TALK ABOUT THIS A LITTLE MORE, TOO, THE FINANCIAL INFORMATION

09:36AM 23 FOR 2015 WAS BASED ON AN ASSUMPTION OF 200 STORES BEING IN

09:36AM 24 OPERATION BETWEEN WALGREENS AND THERANOS; RIGHT?

09:36AM 25 A. 200 --

09:36AM 1 Q. I'M SORRY, I SAID 900. I MEANT TO SAY 900.

09:36AM 2 A. YES, THAT'S WHAT THEY TOLD US.

09:36AM 3 Q. RIGHT. THAT THAT WAS AN ASSUMPTION, IF THEY ACTUALLY
09:36AM 4 BUILT THOSE STORES, THEN THAT'S WHAT THEIR REVENUE PROJECTION
09:36AM 5 FOR 2015 WOULD BE BASED ON; RIGHT?

09:36AM 6 A. CORRECT.

09:36AM 7 Q. OKAY. NOW, YOU WOULD HAVE BEEN HAPPY -- I DON'T WANT TO
09:37AM 8 SAY YOU PERSONALLY -- IF THE 900 STORES WAS EVEN 200 STORES;
09:37AM 9 RIGHT?

09:37AM 10 A. I WOULD LIKE TO HAVE SEEN MORE THAN -- TO GET MORE TO
09:37AM 11 HALF. BUT ANYTHING ABOVE THE 40 THAT THEY WERE AT SHOWED THAT
09:37AM 12 THEY WERE MOVING IN THE RIGHT DIRECTION.

09:37AM 13 WE KNEW THAT THESE WERE PROJECTIONS, BUT THERE WAS NEVER
09:37AM 14 ANY INDICATION THAT WALGREENS WAS NOT GOING TO ROLL OUT PAST
09:37AM 15 THE 40 THAT THEY WERE ALREADY IN.

09:37AM 16 Q. OKAY. YOU WEREN'T PRIVY TO THE DISCUSSIONS BETWEEN
09:37AM 17 THERANOS AND WALGREENS?

09:37AM 18 A. NO.

09:37AM 19 Q. OKAY. AND SO -- BUT YOU WOULD HAVE BEEN HAPPY WITH
09:37AM 20 ANYTHING OVER THE 40, RIGHT, IS WHAT YOU JUST SAID?

09:37AM 21 A. WE WOULD HAVE -- I THINK I SAID YESTERDAY, IF THEY HAD HIT
09:37AM 22 HALF OF THESE STORES, WE WOULD HAVE CONSIDERED THAT A SUCCESS.

09:37AM 23 Q. AND YOU WOULD HAVE BEEN HAPPY WITH EVEN 200 STORES IN
09:37AM 24 2015; RIGHT?

09:37AM 25 A. WE PLANNED ON 900, AND WE ALSO PLANNED ON 300 FROM

09:38AM 1 SAFEWAY, AMONG MANY OTHERS. SO, I MEAN, WE WOULD HAVE HOPED
09:38AM 2 THAT THEY WERE MOVING FORWARD ON THE PLAN OF WHAT THEY LAID OUT
09:38AM 3 FOR US.

09:38AM 4 Q. OKAY. AND MY QUESTION IS SIMPLY VERY NARROW. IT'S YOU
09:38AM 5 WOULD HAVE BEEN HAPPY IF THERANOS EVEN HAD 200 STORES IN 2015?

09:38AM 6 MR. LEACH: OBJECTION, YOUR HONOR. ASKED AND
09:38AM 7 ANSWERED.

09:38AM 8 THE COURT: I'LL ALLOW YOU TO ANSWER.

09:38AM 9 DO YOU UNDERSTAND THE QUESTION?

09:38AM 10 THE WITNESS: I WOULD HAVE LIKED TO HAVE SEEN THEM
09:38AM 11 COME CLOSE TO THEIR PLAN.

09:38AM 12 BY MR. COOPERSMITH:

09:38AM 13 Q. OKAY. OKAY. LET'S HAVE YOU TAKE A LOOK AT EXHIBIT 28311
09:38AM 14 IN YOUR BINDERS.

09:39AM 15 OKAY. DO YOU HAVE THAT?

09:39AM 16 A. YES.

09:39AM 17 Q. OKAY. AND DO YOU SEE THAT'S A MEMORANDUM?

09:39AM 18 A. YES.

09:39AM 19 Q. OKAY. NOW, IN APRIL OF 2017, YOU GAVE AN INTERVIEW TO
09:39AM 20 SOME PEOPLE WHO WORKED FOR THE GOVERNMENT; RIGHT?

09:39AM 21 A. YES.

09:39AM 22 Q. AND ONE OF THE PEOPLE WHO WAS THERE WAS POSTAL INSPECTOR
09:39AM 23 CHRISTOPHER MCCOLLOWS?

09:39AM 24 A. OKAY.

09:39AM 25 Q. AND HE'S SITTING RIGHT THERE (INDICATING)?

09:39AM 1

A. OKAY.

09:39AM 2

Q. DO YOU RECOGNIZE HIM?

09:39AM 3

A. I DON'T.

09:39AM 4

Q. AND THERE WERE OTHER PEOPLE THERE FROM OTHER GOVERNMENTAL

09:39AM 5

AGENCIES?

09:39AM 6

A. YES.

09:39AM 7

Q. AND DID YOU UNDERSTAND THAT YOU WERE GIVING AN INTERVIEW

09:39AM 8

IN CONNECTION WITH AN INVESTIGATION THAT THE GOVERNMENT WAS

09:39AM 9

DOING?

09:39AM 10

A. YES.

09:39AM 11

Q. AND YOU UNDERSTAND THAT YOU WERE REQUIRED TO TELL THE

09:39AM 12

TRUTH?

09:39AM 13

A. YES.

09:39AM 14

Q. AND THAT THERE WERE CONSEQUENCES IF YOU DIDN'T; RIGHT?

09:40AM 15

A. YES.

09:40AM 16

Q. AND YOU DID TRY TO TELL THE TRUTH; RIGHT?

09:40AM 17

A. YES.

09:40AM 18

Q. OKAY. AND IF YOU COULD TAKE A LOOK AT PAGE 4 OF THE

09:40AM 19

DOCUMENT IN FRONT OF YOU, AND IF YOU WOULD LOOK AT THE THIRD

09:40AM 20

PARAGRAPH UP FROM IT THE BOTTOM.

09:40AM 21

YOU TOLD THE GOVERNMENT DURING THAT INTERVIEW THAT YOU

09:40AM 22

THOUGHT 900 STORES MAY HAVE BEEN AMBITIOUS, BUT YOU WERE STILL

09:40AM 23

COMFORTABLE WITH THE INVESTMENT EVEN IF THERANOS WAS ONLY

09:40AM 24

LOCATED IN 200 STORES?

09:40AM 25

A. OKAY.

09:40AM 1 Q. THAT'S WHAT YOU TOLD THE GOVERNMENT?

09:40AM 2 A. YES, THEY WERE MOVING FORWARD. THAT WOULD HAVE BEEN -- I
09:40AM 3 WOULDN'T HAVE BEEN -- I DON'T THINK WE WOULD HAVE BEEN SUPER
09:40AM 4 HAPPY THAT THEY DIDN'T HIT THEIR PLAN, BUT THEY WERE DEFINITELY
09:41AM 5 MOVING TOWARDS A ROLLOUT AT 200 STORES.

09:41AM 6 Q. OKAY. AND YOU UNDERSTOOD THAT 900 STORES MAY HAVE BEEN
09:41AM 7 AMBITIOUS?

09:41AM 8 A. YES.

09:41AM 9 Q. AND YOU WOULD HAVE BEEN STILL COMFORTABLE IF THEY HAD ONLY
09:41AM 10 HAD 200 STORES IN 2015?

09:41AM 11 A. YES.

09:41AM 12 Q. OKAY. LET'S GO BACK TO EXHIBIT 2015 THAT WE WERE JUST
09:41AM 13 LOOKING AT A MINUTE AGO AND JUST FINISH THE DOCUMENT.

09:41AM 14 DO YOU SEE THERE'S A SECTION CALLED RISKS?

09:41AM 15 A. YES.

09:41AM 16 Q. AND UNDER THAT YOU WRITE, "NOW HAVE LONG-TERM CONTRACTS,
09:41AM 17 SO RISK IS EXECUTION"; RIGHT?

09:41AM 18 A. YES. ELIZABETH SAID THAT.

09:41AM 19 Q. RIGHT. AND WE TALKED ABOUT THAT YESTERDAY?

09:41AM 20 A. YES.

09:41AM 21 Q. OKAY. IF YOU WOULD GO TO THE NEXT PAGE.

09:42AM 22 OH, I'M SORRY, JUST DO ONE OTHER THING ON THE FIRST PAGE.

09:42AM 23 UNDER THAT SAME SECTION, RISKS, DO YOU SEE THAT THERE'S A
09:42AM 24 SECTION THAT SAYS, "USED ARIZONA MARKET AS TEST"?

09:42AM 25 A. YES.

09:42AM 1 Q. AND THEN IF YOU GO TO THE NEXT PAGE, THERE'S A SECTION OR
09:42AM 2 A NOTE ABOUT "TALK ABOUT RDV INVESTMENT PHILOSOPHY"?
09:42AM 3 A. YES.
09:42AM 4 Q. AND ONE OF THEM IS TO "BUILD GREAT LONG-TERM COMPANIES"?
09:42AM 5 A. YES.
09:42AM 6 Q. AND BELOW THAT THERE'S A SECTION CALLED "THIS ROUND"?
09:42AM 7 A. YES.
09:42AM 8 Q. AND THAT'S REFERRING TO THE INVESTMENT ROUND; RIGHT?
09:42AM 9 A. YES. WE ASKED HER THE PLANS FOR THE CAPITAL RAISE.
09:42AM 10 Q. OKAY. AND THEN THERE'S A "USE OF PROCEEDS."
09:42AM 11 AND THEN YOU WROTE "DID NOT DISCUSS"; RIGHT?
09:42AM 12 A. CORRECT.
09:42AM 13 Q. AND SO ON THAT CALL, THAT WAS SOMETHING THAT WAS NOT
09:42AM 14 DISCUSSED; RIGHT?
09:42AM 15 A. CORRECT.
09:42AM 16 Q. OKAY. OKAY. LET'S PUT THAT ASIDE.
09:43AM 17 IF WE CAN GO TO EXHIBIT 2033. THIS IS NOT IN EVIDENCE.
09:43AM 18 BUT IF YOU TAKE A LOOK AT IT ON YOUR SCREEN, MS. PETERSON,
09:43AM 19 DO YOU SEE THAT IT'S AN EMAIL -- IT'S AN EMAIL STRING BETWEEN
09:43AM 20 YOU AND OTHER PEOPLE AT RDV?
09:43AM 21 A. YES.
09:43AM 22 Q. AND IT RELATES TO THE THERANOS INVESTMENT?
09:43AM 23 A. YES.
09:43AM 24 MR. COOPERSMITH: YOUR HONOR, WE OFFER 2033.
09:43AM 25 MR. LEACH: NO OBJECTION, YOUR HONOR.

09:43AM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:43AM 2 (GOVERNMENT'S EXHIBIT 2033 WAS RECEIVED IN EVIDENCE.)

09:43AM 3 BY MR. COOPERSMITH:

09:43AM 4 Q. OKAY. AND AT THE BOTTOM THERE'S AN EMAIL FROM

09:43AM 5 KARIUKI KUNGU?

09:43AM 6 A. YES, KARIUKI KUNGU.

09:43AM 7 Q. KARIUKI KUNGU, THANK YOU.

09:44AM 8 AND HE SAYS, "HEY LISA,

09:44AM 9 "WE WERE WONDERING IF BDT IS THE GP WE SHOULD LIST FOR

09:44AM 10 THERANOS?"

09:44AM 11 DO YOU SEE THAT?

09:44AM 12 A. YES.

09:44AM 13 Q. AND BDT IS THE BYRON TROTT ORGANIZATION?

09:44AM 14 A. YES, THEY'RE A PRIVATE EQUITY FIRM.

09:44AM 15 Q. THANK YOU, MS. PETERSON.

09:44AM 16 AND GP, THAT REFERS TO GENERAL PARTNER; IS THAT RIGHT?

09:44AM 17 A. CORRECT.

09:44AM 18 Q. AND THEN YOU ANSWERED, "NO, THEY ARE NOT PART OF THIS

09:44AM 19 TRANSACTION. IT'S A DIRECT."

09:44AM 20 IS THAT RIGHT?

09:44AM 21 A. YES.

09:44AM 22 Q. AND YOU TALKED ABOUT THIS YESTERDAY. THIS WAS A DIRECT

09:44AM 23 INVESTMENT IN THERANOS; RIGHT?

09:44AM 24 A. YES.

09:44AM 25 Q. AND THEN ABOVE THAT MR. -- I'M SORRY, IS IT MISTER OR

09:44AM 1 MISS?

09:44AM 2 A. MISTER.

09:44AM 3 Q. MR. KUNGU SAYS, "OK COOL. ARE THERE ANY OF THE GP'S THAT

09:45AM 4 ARE INVESTING, KIND OF LIKE PARTNERS GROUP WITH MULTI PLAN."

09:45AM 5 DO YOU SEE THAT?

09:45AM 6 A. YES.

09:45AM 7 Q. AND THEN YOU RESPOND, "NO, SHE" -- ARE YOU REFERRING TO

09:45AM 8 MS. HOLMES THERE?

09:45AM 9 A. YES.

09:45AM 10 Q. "SHE DOESN'T WANT ANYONE WITH A FORCED TIME HORIZON

09:45AM 11 INVESTING."

09:45AM 12 DO YOU SEE THAT?

09:45AM 13 A. YES.

09:45AM 14 Q. "AND THE FAMILIES SHE IS BRINGING IN NOW ARE TAKING OUT

09:45AM 15 THE CURRENT VC."

09:45AM 16 DO YOU SEE THAT?

09:45AM 17 A. YES.

09:45AM 18 Q. AND THAT'S VENTURE CAPITAL?

09:45AM 19 A. YES.

09:45AM 20 Q. AND SO YOU UNDERSTOOD AT THIS TIME THAT YOU WERE HAVING

09:45AM 21 THIS EMAIL EXCHANGE THAT MS. HOLMES DID NOT WANT INVESTORS WHO

09:45AM 22 HAD A FORCED TIME HORIZON; RIGHT?

09:45AM 23 A. THAT WAS MY UNDERSTANDING, YES.

09:45AM 24 Q. MEANING PEOPLE THAT WANTED TO CASH OUT OF THE INVESTMENT

09:45AM 25 MORE QUICKLY?

09:45AM 1 A. SHE WANTED LONGER TERM CAPITAL.

09:45AM 2 Q. RIGHT. LONGER TERM INVESTORS?

09:45AM 3 A. YES.

09:45AM 4 Q. OKAY. LET'S GO TO EXHIBIT 2073, AND THIS IS ALREADY IN

09:46AM 5 EVIDENCE.

09:46AM 6 THIS IS AN EMAIL AND AN ATTACHED MEMO THAT YOU PREPARED

09:46AM 7 RELATING TO THERANOS; CORRECT?

09:46AM 8 A. YES.

09:46AM 9 Q. AND IF YOU GO TO THE EMAIL JUST TO START WITH, THERE'S A

09:46AM 10 LINE THERE WHERE YOU SAY THAT YOU'RE PREPARING THE MEMO, AND

09:46AM 11 THE WORDS YOU USED ARE WITHOUT -- SO THAT OTHERS WOULDN'T HAVE

09:46AM 12 TO READ THROUGH THE WHOLE FOOT OF MATERIALS.

09:46AM 13 IS THAT WHAT YOU'RE SAYING?

09:46AM 14 A. YES.

09:46AM 15 Q. AND THAT'S WHY YOU TOOK ON THE TASK OF LOOKING THROUGH THE

09:46AM 16 BINDERS AND TRYING TO SYNTHESIZE MATERIALS; RIGHT?

09:46AM 17 A. YES.

09:46AM 18 Q. SO OTHERS WOULDN'T HAVE TO LOOK THROUGH THE BINDERS?

09:46AM 19 A. CORRECT.

09:46AM 20 AND THEY WEREN'T ON THE PHONE CALL, SO CAPTURING WHAT WAS

09:46AM 21 SAID WAS IMPORTANT.

09:46AM 22 Q. OKAY. AND THIS IS A MEMO THAT YOU WROTE ON OCTOBER 3RD?

09:47AM 23 A. CORRECT.

09:47AM 24 Q. OKAY.

09:47AM 25 A. WELL, BETWEEN THE 3RD AND THE 12TH.

09:47AM 1 Q. OKAY. IF WE GO TO THE NEXT PAGE, THIS IS THE FIRST PAGE
09:47AM 2 OF THE MEMO, AND THEN AT THIS TIME BETWEEN THE 3RD AND THE
09:47AM 3 12TH, I THINK YOU JUST SAID, OF OCTOBER OF 2014, AT THAT POINT
09:47AM 4 YOU HAD NEVER MET OR SPOKEN TO SUNNY BALWANI; RIGHT?

09:47AM 5 A. CORRECT.

09:47AM 6 Q. AND THE ONLY CONTACT THAT YOU HAD WITH MR. BALWANI WAS AT
09:47AM 7 THAT MEETING ON OCTOBER 14TH AND IN SOME EMAILS AFTER THAT;
09:47AM 8 RIGHT?

09:47AM 9 A. CORRECT.

09:47AM 10 Q. OKAY. AND I THINK YOU SAID THE MEETING ON OCTOBER 14TH,
09:47AM 11 WHICH WE'LL GET TO, WAS ABOUT FOUR TO FOUR AND A HALF HOURS?

09:47AM 12 A. YES.

09:47AM 13 Q. OKAY. AND PART OF THAT, THE LAST PART OF IT WAS A TOUR;
09:47AM 14 RIGHT?

09:47AM 15 A. CORRECT.

09:47AM 16 Q. AND MR. BALWANI DIDN'T GO ON THE TOUR?

09:47AM 17 A. CORRECT.

09:47AM 18 Q. BUT HE WAS AT THE MEETING?

09:47AM 19 A. YES.

09:47AM 20 Q. OKAY. LET'S JUST GO TO THE SECOND PAGE OF THE MEMO,
09:48AM 21 EXHIBIT 2073.

09:48AM 22 AND AT THIS TIME YOUR UNDERSTANDING WAS, IF YOU LOOK AT
09:48AM 23 THE FIRST LINE AFTER "DESCRIBE THE WALGREENS OPPORTUNITY," AT
09:48AM 24 THIS TIME YOU UNDERSTOOD THAT -- YOUR UNDERSTANDING WAS THAT
09:48AM 25 THERANOS OPERATES JUST 22 LAB LOCATIONS.

09:48AM 1 DO YOU SEE THAT?

09:48AM 2 A. YES.

09:48AM 3 Q. OKAY. AND THEN IF YOU GO DOWN FURTHER, THERE'S A LINE IN
09:48AM 4 THAT SAME PARAGRAPH THAT SAYS, "THERANOS'S REVENUE FOR 2015 IS
09:48AM 5 PROJECTED TO BE \$990 MILLION AND ASSUMES THEY OPEN 900
09:48AM 6 WALGREENS-THERANOS CENTERS NEXT YEAR."

09:48AM 7 DO YOU SEE THAT?

09:48AM 8 A. YES.

09:48AM 9 Q. OKAY. NOW, THEN YOU HAVE A SECTION BELOW THAT CALLED
09:48AM 10 "WHAT ARE THE MAIN RISKS?"

09:48AM 11 DO YOU SEE THAT?

09:48AM 12 A. YES.

09:48AM 13 Q. AND AGAIN, YOU'RE IDENTIFYING THE SAME RISKS; RIGHT?

09:48AM 14 A. I'M IDENTIFYING THE SAME RISKS, THE EXECUTION, YES.

09:48AM 15 Q. RIGHT. THAT'S WHAT I WAS REFERRING TO.

09:48AM 16 A. YES.

09:48AM 17 Q. AND SO THAT FIRST SENTENCE, IT SAYS, "HOLMES BELIEVES THE
09:49AM 18 COMPANY'S PRIMARY RISK IS THE EXECUTION OF ITS BUSINESS PLAN,
09:49AM 19 RATHER THAN TECHNOLOGY, VALIDATION, AND CUSTOMER ACCEPTANCE.

09:49AM 20 DO YOU SEE THAT?

09:49AM 21 A. YES.

09:49AM 22 Q. AND SO THAT'S WHAT YOU UNDERSTOOD THERANOS WAS TELLING YOU
09:49AM 23 THEIR MAIN RISK WAS; RIGHT?

09:49AM 24 A. YES.

09:49AM 25 Q. AND AGAIN, EXECUTION RISK, OR EXECUTION OF THE BUSINESS

09:49AM 1 PLAN, THAT'S THE RISK THAT DESPITE THEIR GOALS, THEY WOULDN'T
09:49AM 2 ACTUALLY ROLL OUT ALL OF THE STORES THAT THEY WANTED TO ROLL
09:49AM 3 OUT?
09:49AM 4 A. THAT'S CORRECT.
09:49AM 5 Q. OKAY. IF WE GO TO THE LAST SECTION ON THAT SAME PAGE,
09:49AM 6 THAT'S PAGE 5 OF THE EXHIBIT, THERE'S A SECTION ABOUT "WHAT ARE
09:49AM 7 THERANOS'S KEY OBJECTIVES FOR THE MEETING ON OCTOBER 14TH?"
09:49AM 8 RIGHT?
09:49AM 9 A. YES.
09:49AM 10 Q. AND SO THIS WAS TRYING TO INFORM YOUR GROUP THAT -- JUST
09:49AM 11 PREPARING FOR THE OCTOBER 14TH MEETING; RIGHT?
09:49AM 12 A. YES.
09:49AM 13 Q. AND YOU WROTE, "THERANOS DESIRES A LONG-TERM PARTNERSHIP
09:49AM 14 WITH INVESTORS IN THE CURRENT FUNDRAISING ROUND. IN
09:49AM 15 PARTICULAR, HOLMES IS SEEKING INVESTORS WHO WANT TO BUILD A
09:50AM 16 GREAT COMPANY THAT WILL BOTH 'DO WELL AND DO GOOD' OVER THE
09:50AM 17 COURSE OF MULTIPLE GENERATIONS."
09:50AM 18 DO YOU SEE THAT?
09:50AM 19 A. YES.
09:50AM 20 Q. "WITH LESS EMPHASIS ON LIQUIDITY AND MORE EMPHASIS ON
09:50AM 21 LONG-TERM CAPITAL APPRECIATION."
09:50AM 22 DO YOU SEE THAT?
09:50AM 23 A. YES.
09:50AM 24 Q. AND THAT'S WHAT YOU UNDERSTOOD FROM YOUR CONVERSATION WITH
09:50AM 25 MS. HOLMES?

09:50AM 1

A. YES.

09:50AM 2

Q. AND RDV WAS PREPARED TO MAKE A MULTI-GENERATIONAL

09:50AM 3

COMMITMENT?

09:50AM 4

A. YES.

09:50AM 5

Q. LET'S GO TO THE NEXT PAGE, PAGE 6.

09:50AM 6

AND IN PARTICULAR, LET'S JUST START WITH THE BULLET POINT

09:50AM 7

THAT BEGINS WITH PATENTS, "HOLMES'S NAME IS ON 18 U.S. AND 66

09:50AM 8

FOREIGN."

09:50AM 9

DO YOU SEE THAT?

09:50AM 10

A. YES.

09:50AM 11

Q. AND WE TALKED ABOUT THIS YESTERDAY. THIS WAS SOMETHING OF

09:50AM 12

INTEREST TO YOU, THAT THERANOS HAD ENGAGED IN THIS PROCESS OF

09:50AM 13

OBTAINING PATENTS ON THEIR TECHNOLOGY?

09:51AM 14

A. YES.

09:51AM 15

Q. AND THEN IF YOU GO TO, THERE'S A BULLET BELOW THAT AND IT

09:51AM 16

SAYS, "A THERANOS ANALYZER STATION IS A SMALL FRACTION OF THE

09:51AM 17

SIZE OF A CURRENT LAB."

09:51AM 18

DO YOU SEE THAT?

09:51AM 19

A. YES.

09:51AM 20

Q. AND IT SAYS, "MAKING IT POSSIBLE TO PLACE A THERANOS LAB

09:51AM 21

IN THE OPERATING ROOM OR IN A MILITARY EVACUATION HELICOPTER,

09:51AM 22

ON SHIPS, IN REFUGEE CAMPS, VIRTUALLY ANYWHERE."

09:51AM 23

AND THEN IT GOES ON.

09:51AM 24

DO YOU SEE THAT?

09:51AM 25

A. YES.

09:51AM 1 Q. AND YOU UNDERSTAND THAT IF THE DEVICE WAS SMALL, THAT
09:51AM 2 WOULD MAKE THINGS POSSIBLE; RIGHT?

09:51AM 3 A. YES.

09:51AM 4 Q. AND YOU DON'T REMEMBER THE SPECIFICS OF WHAT MS. HOLMES OR
09:51AM 5 MR. BALWANI TOLD YOU ABOUT THE MILITARY APPLICATION; CORRECT?

09:51AM 6 A. AT THIS POINT IN TIME WHEN THIS MEMO WAS DONE, NO.
09:51AM 7 BUT WHEN WE WERE THERE ON THE 14TH THAT WAS DISCUSSED.

09:51AM 8 Q. OKAY. AND WHEN YOU WERE THERE ON THE 14TH, YOU REMEMBER
09:52AM 9 THAT THEY DISCUSSED SOMETHING ABOUT THE DEPARTMENT OF DEFENSE;
09:52AM 10 RIGHT?

09:52AM 11 A. YES.

09:52AM 12 Q. AND SOMETHING ABOUT HELICOPTERS?

09:52AM 13 A. YES.

09:52AM 14 Q. BUT YOU DON'T REMEMBER SPECIFICALLY WHAT THEY SAID?

09:52AM 15 A. JUST THAT THE ANALYZERS WERE ON MILITARY HELICOPTERS AND
09:52AM 16 BEING USED BY THE DEPARTMENT OF DEFENSE.

09:52AM 17 Q. BUT DO YOU REMEMBER THEIR EXACT WORDS?

09:52AM 18 A. NOT THE EXACT WORDS, NO.

09:52AM 19 Q. BUT YOU NEVER -- HELICOPTERS CAME UP IN THE CONVERSATION?

09:52AM 20 A. YES.

09:52AM 21 Q. AND THE DEPARTMENT OF DEFENSE?

09:52AM 22 A. AND THAT THEY WERE BEING USED IN MILITARY USES ON
09:52AM 23 HELICOPTERS, YES.

09:52AM 24 Q. THAT THEY HAD SOME RELATIONSHIP WITH THE MILITARY?

09:52AM 25 A. YES.

09:52AM 1 Q. AND THERE WAS SOME EFFORT TO PUT THESE DEVICES ON
09:52AM 2 HELICOPTERS?
09:52AM 3 A. YES.
09:52AM 4 Q. OKAY. OKAY. LET'S LOOK AT EXHIBIT 2192.
09:53AM 5 AND THIS IS NOT IN EVIDENCE, SO LET'S JUST LOOK AT IT
09:53AM 6 TOGETHER FOR A MINUTE, MS. PETERSON.
09:53AM 7 THIS IS AN EMAIL FROM A PERSON NAMED CAMDEN BRIEDEN?
09:53AM 8 A. UH-HUH.
09:53AM 9 Q. TO YOU AND OTHERS WITHIN RDV.
09:53AM 10 DO YOU SEE THAT?
09:53AM 11 A. YES.
09:53AM 12 Q. AND THIS IS NOVEMBER 6TH, 2014?
09:53AM 13 A. YES.
09:53AM 14 Q. AND SO THIS IS JUST ACTUALLY A FEW DAYS AFTER THE
09:53AM 15 INVESTMENT WAS MADE; RIGHT?
09:53AM 16 A. YES.
09:53AM 17 Q. AND WAS THAT ON OCTOBER 31ST?
09:53AM 18 A. YES.
09:53AM 19 Q. AND THIS IS A FORM THAT RDV ROUTINELY FILLS OUT IN THE
09:53AM 20 COURSE OF ITS INVESTMENT WORK?
09:53AM 21 A. YES.
09:53AM 22 Q. AND IT WAS FILLED OUT IN THE CASE OF THERANOS, TOO?
09:53AM 23 A. YES.
09:53AM 24 Q. OKAY.
09:53AM 25 YOUR HONOR, WE OFFER 2192.

09:53AM 1 MR. LEACH: I'M SORRY, COUNSEL. I DON'T HAVE A COPY
09:53AM 2 OF 2192 IN MY BINDER.
09:54AM 3 THE COURT: I DON'T THINK I DO, EITHER.
09:54AM 4 MR. COOPERSMITH: OKAY. LET'S SEE. DO YOU NEED
09:54AM 5 ANOTHER COPY?
09:54AM 6 MR. LEACH: I CAN LOOK AT IT FIRST.
09:54AM 7 MR. COOPERSMITH: OF COURSE.
09:54AM 8 (HANDING.)
09:54AM 9 MR. COOPERSMITH: AND DOES YOUR HONOR HAVE A COPY?
09:54AM 10 THE COURT: NO.
09:54AM 11 MR. COOPERSMITH: YOUR HONOR, I GUESS I COULD HAND
09:54AM 12 UP MY COPY OR JUST TO NOT WASTE TIME.
09:54AM 13 THE COURT: WELL, IT IS ON THE SCREEN, ISN'T IT?
09:54AM 14 MR. COOPERSMITH: YES.
09:54AM 15 THE COURT: THAT'S FINE.
09:54AM 16 MR. LEACH: I HAVE NO OBJECTION.
09:54AM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
09:54AM 18 (GOVERNMENT'S EXHIBIT 2192 WAS RECEIVED IN EVIDENCE.)
09:54AM 19 MR. COOPERSMITH: THANK YOU, YOUR HONOR.
09:54AM 20 Q. OKAY. SO NOW WE'RE ALL LOOKING AT EXHIBIT 2192, AND THIS
09:54AM 21 IS THE FORM. AND YOU SEE IT'S FROM THIS PERSON CAMDEN BRIEDEN?
09:54AM 22 A. YES.
09:54AM 23 Q. AND WHO IS THAT?
09:54AM 24 A. HE'S AN ANALYST.
09:54AM 25 Q. SOMEONE YOU WORK WITH AT RDV?

09:55AM 1 A. YES.

09:55AM 2 Q. AND HE WROTE, "LISA -- CAN YOU PLEASE HELP FILL IN THE
09:55AM 3 BLANKS FOR THERANOS EFRONT TEMPLATE AS BEST AS POSSIBLE. WE
09:55AM 4 UNDERSTAND THIS IS A UNIQUE INVESTMENT AND MAY NOT HAVE
09:55AM 5 PROJECTED EXIT OR RETURN NUMBERS. IF YOU CAN PROVIDE A BEST
09:55AM 6 GUESS, THAT'S GREAT. THIS WILL BE USED IN FORECASTING CASH
09:55AM 7 FLOWS. ANY QUESTIONS, JUST ASK MYSELF OR ANDREW. THANKS FOR
09:55AM 8 YOUR HELP WITH THIS -- CAM."

09:55AM 9 RIGHT?

09:55AM 10 A. YES.

09:55AM 11 Q. AND SO MR. BRIEDEN NEEDED THIS PIECE TO KEEP IN THE FILE
09:55AM 12 ABOUT THIS PARTICULAR INVESTMENT; RIGHT?

09:55AM 13 A. IT'S VERY COMMON FOR US WHEN WE INVEST IN PRIVATE EQUITY
09:55AM 14 FUNDS AND DO THOSE COINVESTMENTS, THOSE HAVE MORE OF A FINITE
09:55AM 15 LIFE TO THEM BECAUSE THESE PRIVATE EQUITY FUNDS HAVE TO GET OUT
09:55AM 16 OF THE INVESTMENT.

09:55AM 17 THIS ONE WASN'T ATTACHED TO A PRIVATE EQUITY FUND, SO IT
09:55AM 18 WAS A LITTLE BIT DIFFICULT TO FILL OUT THIS FORM.

09:55AM 19 Q. RIGHT.

09:55AM 20 A. SO HE ASKED FOR MY HELP.

09:56AM 21 BUT THE -- YES, WE FILL THIS OUT FOR EVERYTHING.

09:56AM 22 Q. OKAY. AND SO EVEN THOUGH THERANOS WAS A LITTLE BIT OF A
09:56AM 23 DIFFERENT THING COMPARED TO THE PRIVATE EQUITY INVESTMENTS --

09:56AM 24 A. YES.

09:56AM 25 Q. -- MR. BRIEDEN AND YOURSELF STILL WANTED THE FORM TO BE

09:56AM 1 FILLED OUT; RIGHT?

09:56AM 2 A. WE ATTEMPTED TO. AND THIS IS REALLY USED FOR THE FAMILY'S

09:56AM 3 CASH FLOW PLANNING PURPOSES. IF IT DOESN'T COME OUT THE WAY

09:56AM 4 THAT WE FORECASTED IT IN THE SYSTEM, THEY JUST PUSH IT OUT.

09:56AM 5 IT'S REALLY USED AS A TOOL TO PLAN FOR THE FAMILY FOR CASH

09:56AM 6 FLOW INVESTING.

09:56AM 7 Q. THANK YOU. THE WRITING ON IT, IS THAT YOUR HANDWRITING?

09:56AM 8 A. YES. YES.

09:56AM 9 Q. OKAY. SO LET'S GO THROUGH IT A LITTLE BIT.

09:56AM 10 SO THE FIRST BOX I WANTED TO SHOW YOU IS THAT THERE'S A

09:56AM 11 SECTION FOR "PLANNED END FUND DATE/COINVESTMENT EXIT."

09:56AM 12 DO YOU SEE THAT?

09:56AM 13 A. YES.

09:57AM 14 Q. AND THAT WOULD BE FOR ANY INVESTMENT WHEN RDV WOULD BE

09:57AM 15 LIKE OUT OF THE INVESTMENT ALL TOGETHER; RIGHT?

09:57AM 16 A. AGAIN, IT'S A PLANNING TOOL, SO WE USUALLY PUT FIVE YEARS

09:57AM 17 IN THERE, LIKE FOR EVERYTHING.

09:57AM 18 Q. OKAY. RIGHT. BUT JUST SO WE UNDERSTAND WHAT THAT IS

09:57AM 19 REFERRING TO, THIS PARTICULAR ITEM, IT'S LIKE WHEN RDV WOULD BE

09:57AM 20 COMPLETELY OUT OF THE INVESTMENT; RIGHT?

09:57AM 21 A. AGAIN, IT'S JUST A CASH FLOW PLANNING TOOL.

09:57AM 22 BUT, YES, IT'S A DATE WE PUT ON THERE SO WHEN WE DO OUR

09:57AM 23 CASH FLOW FORECASTING, THIS INVESTMENT SHOWS UP SOMEWHERE.

09:57AM 24 WE DON'T -- WE CAN'T PUT IT IN THERE AS INFINITE IF WE'RE

09:57AM 25 GOING TO HOLD IT LONG-TERM. SO WE JUST DECIDED TO PUT IT OUT

09:57AM 1 THERE A LITTLE LONGER THAN WE PUT OTHER INVESTMENTS.

09:57AM 2 Q. OKAY. THANK YOU. I JUST WANT TO MAKE SURE IN MY QUESTION
09:57AM 3 AND ANSWER.

09:57AM 4 MY QUESTION IS REALLY SIMPLE: IT'S THIS PARTICULAR ITEM,
09:57AM 5 PUTTING ASIDE WHAT YOU WROTE, THE ITEM IS JUST CALLING FOR LIKE
09:57AM 6 AN EXIT DATE FOR THE INVESTMENT; RIGHT?

09:57AM 7 A. YES.

09:58AM 8 Q. OKAY. SO AN EXIT DATE WOULD MEAN THE TIME THAT RDV SELLS
09:58AM 9 THE INVESTMENT OR IT'S OTHERWISE OVER; RIGHT?

09:58AM 10 A. YES.

09:58AM 11 Q. AND IN THE CASE OF THERANOS YOU WROTE ON THAT ITEM,
09:58AM 12 "GUESS."

09:58AM 13 RIGHT?

09:58AM 14 A. YES.

09:58AM 15 Q. AND NEXT TO THAT, SEVEN YEARS?

09:58AM 16 A. YES.

09:58AM 17 Q. AND SO THAT WAS A GUESS?

09:58AM 18 A. YES.

09:58AM 19 Q. AND THEN IF YOU GO BELOW THAT, YOU SEE THERE'S THIS
09:58AM 20 THING CALLED -- FURTHER DOWN THE PAGE, "TARGET IRR.

09:58AM 21 DO YOU SEE THAT?

09:58AM 22 A. YES.

09:58AM 23 Q. AND WHAT IS IRR?

09:58AM 24 A. INTERNAL RATE OF RETURN.

09:58AM 25 Q. SO THAT'S THE RATE OF RETURN ON THE INVESTMENT RDV MIGHT

09:58AM 1 REASONABLY EXPECT; RIGHT?

09:58AM 2 A. YES.

09:58AM 3 Q. SO IN OTHER WORDS, IF IT WAS A LOAN, HYPOTHETICALLY, AND
09:58AM 4 IN A DIFFERENT SITUATION IT WAS A LOAN AND THE INTEREST RATE
09:58AM 5 WAS 10 PERCENT, THE RATE OF RETURN IN THAT SITUATION WOULD BE
09:58AM 6 10 PERCENT; RIGHT?

09:58AM 7 A. YES.

09:58AM 8 Q. OKAY. SO THIS IS ASKING WHAT RATE OF RETURN COULD RDV
09:59AM 9 REASONABLY EXPECT; RIGHT?

09:59AM 10 A. YES.

09:59AM 11 Q. OKAY. AND THEN YOU WROTE THERE "GUESS."
09:59AM 12 CORRECT?

09:59AM 13 A. YES.

09:59AM 14 Q. AND THEN IT SAYS, "SEVEN YEARS; FIVE TIMES AT 30 PERCENT
09:59AM 15 IRR."

09:59AM 16 DO YOU SEE THAT?

09:59AM 17 A. YES.

09:59AM 18 Q. AND THEN BELOW THAT YOU WROTE, "NO RETURN ESTIMATES WERE
09:59AM 19 PROVIDED; THIS IS RDV TARGETS."

09:59AM 20 A. YES.

09:59AM 21 Q. SO THERANOS DID NOT PROVIDE ANY RETURN ESTIMATES TO YOU;
09:59AM 22 RIGHT?

09:59AM 23 A. NO.

09:59AM 24 Q. AND SO YOU WERE JUST DOING THIS INTERNALLY?

09:59AM 25 A. THIS WAS KIND OF STANDARD. AGAIN, IT WAS FOR CASH FLOW

09:59AM 1

PLANNING PURPOSES.

09:59AM 2

Q. OKAY. BECAUSE IT IS -- IN OTHER SITUATIONS, THE OTHER

09:59AM 3

PARTY THAT YOU INVESTED WITH COULD TELL YOU THAT WE EXPECT A

09:59AM 4

CERTAIN RATE OF RETURN; RIGHT?

09:59AM 5

A. THEY ALWAYS DO, YES.

09:59AM 6

Q. BUT IN THE CASE OF THERANOS, THEY DID NOT DO THAT?

09:59AM 7

A. NO.

09:59AM 8

Q. OKAY. AND THEN YOU SEE ABOVE THAT IT SAYS, "THE HOLD

09:59AM 9

PERIOD IS INDEFINITE"?

09:59AM 10

A. YES.

10:00AM 11

Q. THAT MEANS THAT RDV DIDN'T HAVE A PARTICULAR END DATE

10:00AM 12

WHERE THEY WOULD BE OUT OF THE INVESTMENT; RIGHT?

10:00AM 13

A. CORRECT.

10:00AM 14

Q. THAT'S BECAUSE THIS WAS A MULTI-GENERATIONAL COMMITMENT

10:00AM 15

LIKE WE JUST DISCUSSED; RIGHT?

10:00AM 16

A. YES, THEY VIEWED THIS AS A LONG-TERM HOLD.

10:00AM 17

Q. OKAY. LET'S GO TO ANOTHER EXHIBIT THAT YOU REVIEWED

10:00AM 18

ALREADY ON DOCUMENT 4858.

10:00AM 19

AND THIS IS ALREADY IN EVIDENCE, YOUR HONOR.

10:00AM 20

THE COURT: ALL RIGHT.

10:00AM 21

BY MR. COOPERSMITH:

10:00AM 22

Q. DO YOU HAVE 4858 IN FRONT OF YOU?

10:00AM 23

A. YES.

10:00AM 24

Q. AND THIS IS THE FIRST OF THE TWO BINDERS; RIGHT?

10:00AM 25

A. YES.

10:00AM 1 (LAUGHTER.)

10:00AM 2 THE WITNESS: I THINK THEY BOTH HAVE THE SAME COVER

10:00AM 3 ON THEM, SO IF YOU SHOW ME MORE OF THE DOCUMENT I CAN TELL YOU.

10:00AM 4 BY MR. COOPERSMITH:

10:00AM 5 Q. WELL, SURE. AND WHEN WE FLIP THROUGH IT, YOU WILL SEE

10:00AM 6 THAT THIS IS NOT THE ONE WITH THE CLINICAL DATA.

10:01AM 7 A. OKAY.

10:01AM 8 Q. AND SO THAT MEANS IT'S THE FIRST OF THE BINDERS?

10:01AM 9 A. CORRECT.

10:01AM 10 Q. AND THE COVER PAGE WE'RE LOOKING AT IT JUST SAYS THERANOS,

10:01AM 11 AND THIS IS THERANOS PROPRIETARY AND CONFIDENTIAL.

10:01AM 12 DO YOU SEE THAT?

10:01AM 13 A. YES.

10:01AM 14 Q. LET'S GO TO -- I KNOW YOU LOOKED AT SOME OTHER PAGES WITH

10:01AM 15 MR. LEACH, BUT I WANT TO SHOW YOU SOME DIFFERENT PAGES IN SOME

10:01AM 16 CASES.

10:01AM 17 SO THE FIRST PAGE, IF YOU LOOK AT PAGE 8 OF THE DOCUMENT.

10:01AM 18 A. YES.

10:01AM 19 Q. AND YOU SEE IT'S HEADED VALIDATION OF THERANOS TESTS?

10:01AM 20 A. YES.

10:01AM 21 Q. AND THEN IT HAS A REFERENCE TO GLAXOSMITHKLINE.

10:01AM 22 DO YOU SEE THAT?

10:01AM 23 A. YES.

10:01AM 24 Q. AND THEN BELOW THAT IT SAYS, "EXCERPTS FROM JOHNS HOPKINS

10:01AM 25 DUE DILIGENCE AND TECHNOLOGY VALIDATION."

10:01AM 1 DO YOU SEE THAT?

10:01AM 2 A. YES.

10:01AM 3 Q. AND IT SAYS, "THE TECHNOLOGY IS NOVEL AND SOUND. IT CAN
10:01AM 4 ACCURATELY RUN A WIDE RANGE OF ROUTINE AND SPECIAL ASSAYS"?

10:01AM 5 A. YES.

10:01AM 6 Q. "NO MAJOR WEAKNESSES WERE IDENTIFIED"?

10:02AM 7 A. YES.

10:02AM 8 Q. AND YOU UNDERSTAND WHAT JOHNS HOPKINS WAS; RIGHT?

10:02AM 9 A. YES.

10:02AM 10 Q. THIS IS A WORLD LEADING MEDICAL CENTER BASED IN BALTIMORE?

10:02AM 11 A. YES.

10:02AM 12 Q. AND THIS WAS SOMETHING THAT WOULD BE COMFORTING AND
10:02AM 13 ASSURING, REASSURING TO RDV; RIGHT?

10:02AM 14 A. YES.

10:02AM 15 Q. AND THIS WAS IMPRESSIVE TO YOU?

10:02AM 16 A. YES.

10:02AM 17 Q. LET'S LOOK AT EXHIBIT 20532, MR. ALLEN.

10:02AM 18 THIS IS ALSO IN EVIDENCE.

10:02AM 19 A. 2?

10:02AM 20 Q. 20532. I THINK IT WILL JUST COME UP ON YOUR SCREEN. I'M
10:02AM 21 NOT SURE YOU HAVE THAT IN YOUR BINDER.

10:02AM 22 DO YOU SEE THIS WAS A SUMMARY OF
10:02AM 23 HOPKINS/WALGREENS/THERANOS MEETING?

10:02AM 24 A. YES.

10:02AM 25 Q. FROM APRIL 27TH, 2010?

10:03AM 1

A. YES.

10:03AM 2

Q. AND, MR. ALLEN, IF WE CAN GO TO THE SECOND PAGE.

10:03AM 3

DO YOU SEE THAT LINE WHERE IT SAYS, "NO MAJOR WEAKNESSES

10:03AM 4

WERE IDENTIFIED"?

10:03AM 5

A. YES.

10:03AM 6

Q. DID THE GOVERNMENT EVER SHOW YOU THAT?

10:03AM 7

A. I DON'T RECALL.

10:03AM 8

Q. OKAY. LET'S GO BACK TO EXHIBIT 4858. LET'S GO TO

10:03AM 9

PAGE 14.

10:03AM 10

THIS SLIDE IS COST SAVINGS?

10:03AM 11

A. YES.

10:03AM 12

Q. AND DO YOU UNDERSTAND THAT THAT WAS ONE OF THE THINGS THAT

10:03AM 13

THERANOS WAS TRYING TO DO; RIGHT?

10:03AM 14

A. YES.

10:03AM 15

Q. AND THAT'S PART OF THE REASON WHY THEY HAD THESE PRICES

10:03AM 16

PUBLISHED ON THEIR WEBSITE?

10:03AM 17

A. CORRECT.

10:03AM 18

Q. AND THAT WAS INTERESTING TO RDV AS WELL?

10:03AM 19

A. YES.

10:03AM 20

Q. AND YOU UNDERSTAND THE BLOOD TESTS THAT WERE BEING OFFERED

10:03AM 21

IN WALGREENS STORES WERE ACTUALLY CHEAPER THAN OTHER BLOOD

10:03AM 22

TESTS THAT YOU MIGHT GET FROM OTHER COMPANIES?

10:04AM 23

A. THAT WAS OUR UNDERSTANDING, YES.

10:04AM 24

Q. OKAY. IF YOU GO TO PAGE 19, YOU SEE THAT SLIDE IS COST

10:04AM 25

SAVINGS FOR NATIONAL MEDICAID?

10:04AM 1 A. YES.

10:04AM 2 Q. AND THEN IF YOU GO TO THE NEXT PAGE, IT'S COST SAVINGS FOR

10:04AM 3 NATIONAL MEDICARE; RIGHT?

10:04AM 4 A. YES.

10:04AM 5 Q. AND THESE ARE GOVERNMENT PROGRAMS THAT PAY HEALTH CARE

10:04AM 6 EXPENSES FOR SOME PEOPLE; RIGHT?

10:04AM 7 A. YES.

10:04AM 8 Q. OKAY. AND FOR THE NATIONAL MEDICARE ONE, DO YOU SEE THAT

10:04AM 9 THERE'S A BAR GRAPH WHERE IT HAS THE SAVINGS ON THE VERTICAL

10:04AM 10 COLUMN, AND ON THE HORIZONTAL COLUMN THERE ARE YEARS?

10:04AM 11 A. YES.

10:04AM 12 Q. AND THAT FOR 2014, IT'S 2014E.

10:04AM 13 DO YOU SEE THAT?

10:04AM 14 A. YES.

10:04AM 15 Q. LIKE AN ESTIMATE; RIGHT?

10:04AM 16 A. YES.

10:04AM 17 Q. OKAY. AND THE SAME FOR MEDICAID ON PAGE 19?

10:04AM 18 A. YES.

10:04AM 19 Q. OKAY. LET'S GO TO PAGE 39.

10:05AM 20 DO YOU SEE THERE THIS SLIDE IS THERANOS INFRASTRUCTURE?

10:05AM 21 A. YES.

10:05AM 22 Q. AND IT SAYS IN THE FIRST PART THERE, "NATIONAL RETAIL

10:05AM 23 FOOTPRINT, HOSPITAL, AND HEALTH PLAN PARTNERSHIPS THROUGHOUT

10:05AM 24 THE UNITED STATES FOR AN UNPRECEDENTED INFRASTRUCTURE WHICH

10:05AM 25 EXCEEDS THAT ANY OF ANY RETAIL LABORATORY IN TODAY'S MARKET."

10:05AM 1 DO YOU SEE THAT?

10:05AM 2 A. YES.

10:05AM 3 Q. AND "EXCEEDS" YOU UNDERSTAND IS A PRESENT TENSE VERB;
10:05AM 4 RIGHT?

10:05AM 5 A. YES.

10:05AM 6 Q. SO WITHOUT KNOWING ANYTHING ELSE, IF YOU READ THAT, IT
10:05AM 7 WOULD SUGGEST THAT RIGHT AT THAT POINT, THERANOS HAS
10:05AM 8 "UNPRECEDENTED INFRASTRUCTURE WHICH EXCEEDS THAT OF ANY RETAIL
10:05AM 9 LABORATORY IN TODAY'S MARKET."

10:05AM 10 RIGHT?

10:05AM 11 A. I'M NOT SURE I UNDERSTAND THE QUESTION.

10:05AM 12 Q. OKAY. WELL, I'LL ASK A DIFFERENT ONE.

10:05AM 13 SO, MS. PETERSON, YOU KNEW WHEN YOU WERE LOOKING AT THESE
10:06AM 14 BINDERS IN OCTOBER OF 2014 THAT THERANOS DID NOT HAVE AN
10:06AM 15 "UNPRECEDENTED INFRASTRUCTURE WHICH EXCEEDS THAT OF ANY RETAIL
10:06AM 16 LABORATORY IN TODAY'S MARKET"; RIGHT?

10:06AM 17 A. YES, WE KNEW THAT THEY DID NOT HAVE THAT.

10:06AM 18 Q. RIGHT. AND, IN FACT, YOU KNEW THAT THERE WERE OTHER
10:06AM 19 COMPANIES, INCLUDING QUEST, THAT HAD MUCH LARGER FOOTPRINTS IN
10:06AM 20 THE UNITED STATES; RIGHT?

10:06AM 21 A. YES.

10:06AM 22 Q. OKAY. SO THIS WAS ASPIRATIONAL FOR THERANOS?

10:06AM 23 A. THIS WAS THEIR PROJECTIONS.

10:06AM 24 THEIR PROJECTIONS WERE THEIR PROJECTIONS.

10:06AM 25 BUT, YES, THEY WEREN'T WHERE THEY WANTED TO BE YET.

10:06AM 1 Q. RIGHT. THIS WAS A GOAL THAT THEY HAD?

10:06AM 2 A. YES.

10:06AM 3 Q. OKAY. IF YOU GO TO THE NEXT PAGE, PAGE 40, YOU SEE
10:06AM 4 THERE'S A MAP WITH A LOT OF DOTS?

10:06AM 5 A. YES.

10:06AM 6 Q. AND UNFORTUNATELY THEY SEEM TO BE MOSTLY ON THE EAST
10:06AM 7 COAST.

10:06AM 8 DO YOU SEE THAT?

10:06AM 9 A. YES.

10:07AM 10 Q. BUT YOU SEE THIS IS A WALGREENS WELLNESS CENTER MAP OF
10:07AM 11 WHAT THE TOTAL WALGREENS FOOTPRINT COULD BE?

10:07AM 12 A. YES.

10:07AM 13 Q. AND YOU KNEW THAT WASN'T IN EXISTENCE AT THAT PARTICULAR
10:07AM 14 TIME THAT YOU WERE LOOKING AT THESE BINDERS; RIGHT?

10:07AM 15 A. CORRECT.

10:07AM 16 Q. OKAY. AND IF YOU GO TO THE NEXT PAGE, PAGE 41.

10:07AM 17 YOU SEE THERANOS WELLNESS CENTERS; RIGHT?

10:07AM 18 A. YES.

10:07AM 19 Q. AND IT SAYS WALGREENS AND OTHER RETAIL PHARMACIES.

10:07AM 20 DO YOU SEE THAT?

10:07AM 21 A. YES.

10:07AM 22 Q. AND THEN BELOW THERANOS'S FOOTPRINT AT RETAIL IT SAYS,
10:07AM 23 "THERANOS WELLNESS CENTERS ARE LOCATED WITHIN A SMALLER RADIUS
10:07AM 24 FROM THE PATIENT, AND OPEN LONGER HOURS THAN CURRENTLY
10:07AM 25 AVAILABLE."

10:07AM 1 DO YOU SEE THAT?

10:07AM 2 A. YES.

10:07AM 3 Q. AND IT GOES ON AND SAYS, "THERANOS HAS MORE WELLNESS
10:07AM 4 CENTERS THAN ANY OTHER LAB PROVIDER IN CALIFORNIA."

10:07AM 5 DO YOU SEE THAT?

10:07AM 6 A. YES.

10:07AM 7 Q. AND YOU KNEW AT THE TIME THAT YOU WERE LOOKING AT THESE
10:07AM 8 BINDERS IN OCTOBER OF 2014 THAT THERANOS DID NOT HAVE MORE
10:08AM 9 WELLNESS CENTERS THAN ANY LAB PROVIDER IN CALIFORNIA?

10:08AM 10 A. YES.

10:08AM 11 Q. AND, IN FACT, IF YOU QUICKLY TURN TO PAGE 74, YOU SEE
10:08AM 12 UNDER CONVENIENT LOCATIONS --

10:08AM 13 A. YES.

10:08AM 14 Q. -- AND IT HAS A GREEN SYMBOL FOR THEIR HEADQUARTERS?

10:08AM 15 A. YES.

10:08AM 16 Q. AND THEN ANOTHER FLAG FOR THE WALGREENS STORE IN
10:08AM 17 PALO ALTO; RIGHT?

10:08AM 18 A. YES.

10:08AM 19 Q. AND THEN IF YOU GO TO THE PAGES BEFORE THAT, PAGES --
10:08AM 20 LET'S START WITH PAGE 72. DO YOU SEE THAT IT HAS LOCATIONS
10:08AM 21 NOTED IN THE PHOENIX AREA?

10:08AM 22 A. YES.

10:08AM 23 Q. AND THEN IF YOU GO TO PAGE 73, IT ACTUALLY LISTS THOSE
10:08AM 24 LOCATIONS; RIGHT?

10:08AM 25 A. YES.

10:08AM 1 Q. OKAY. SO GOING BACK TO PAGE 41 WITH THE STATEMENT THAT

10:08AM 2 "THERANOS HAS MORE WELLNESS CENTERS THAN ANY LAB PROVIDER IN

10:09AM 3 CALIFORNIA," YOU UNDERSTOOD THAT THIS WAS A GOAL THAT THEY HAD;

10:09AM 4 RIGHT?

10:09AM 5 A. YES.

10:09AM 6 Q. IF YOU WOULD GO TO PAGE 83.

10:09AM 7 YOU SEE THIS SLIDE JUST HAS AN EXAMPLE OF PRICING FOR

10:09AM 8 ASSAYS?

10:09AM 9 A. YES.

10:09AM 10 Q. AND IN THIS EXAMPLE IT WOULD BE CBC, CMP, LIPID, TSH, AND

10:09AM 11 VITAMIN D?

10:09AM 12 A. YES.

10:09AM 13 Q. AND THE PRICE IN THIS EXAMPLE WOULD BE \$54 FOR ALL OF

10:09AM 14 THOSE TESTS?

10:09AM 15 A. YES.

10:09AM 16 Q. OKAY. AND THEN IF YOU GO TO PAGE 90.

10:10AM 17 DO YOU SEE THAT THERE'S A SLIDE THAT "EVERY THERANOS TEST

10:10AM 18 BEGINS WITH YOU, THE PHYSICIAN"?

10:10AM 19 A. YES.

10:10AM 20 Q. AND SO THIS SLIDE, THE WAY THAT IT'S WRITTEN, IT SEEMS TO

10:10AM 21 BE DIRECTED TO AN AUDIENCE OF PHYSICIANS; RIGHT?

10:10AM 22 A. YES.

10:10AM 23 Q. BECAUSE YOU, THE PHYSICIAN, DOESN'T REFER TO YOU OR YOUR

10:10AM 24 COLLEAGUES AT RDV; RIGHT?

10:10AM 25 A. CORRECT.

10:10AM 1 Q. OKAY. AND THEN HERE IT SAYS, "FAX ANY LAB ORDER FORM TO
10:10AM 2 THERANOS."
10:10AM 3 RIGHT?
10:10AM 4 A. YES.
10:10AM 5 Q. "DIRECT YOUR PATIENTS TO THE NEAREST THERANOS WELLNESS
10:10AM 6 CENTER."
10:10AM 7 RIGHT?
10:10AM 8 A. YES.
10:10AM 9 Q. AND THEN IT SAYS, "RECEIVE YOUR PATIENT'S RESULTS IN LESS
10:10AM 10 THAN 48 HOURS ON AVERAGE."
10:10AM 11 RIGHT?
10:10AM 12 A. YES.
10:10AM 13 Q. AND THAT WAS IN THE BINDER THAT YOU WERE LOOKING AT;
10:10AM 14 RIGHT?
10:10AM 15 A. YES, AMONG OTHER THINGS.
10:11AM 16 Q. LET'S GO TO PAGE 133, AND I WON'T GO THROUGH ALL OF THESE,
10:11AM 17 MS. PETERSON.
10:11AM 18 BUT IF YOU LOOK AT PAGE 133 ALL OF THE WAY THROUGH 187.
10:11AM 19 IF WE CAN JUST FLIP THROUGH THOSE.
10:11AM 20 YOU SEE THAT THESE ARE ALL JUST LISTS OF THERANOS PATENTS
10:11AM 21 AND OTHER INTELLECTUAL PROPERTY; CORRECT?
10:11AM 22 A. CORRECT.
10:11AM 23 Q. AND THAT'S -- WE TALKED ABOUT THIS BEFORE, BUT THIS WAS
10:11AM 24 SOMETHING THAT YOU WERE INTERESTED IN?
10:11AM 25 A. YES. ALL OF THIS SPEAKS TO US TRYING TO GET AT WHETHER

10:11AM 1 THE ANALYZER WORKED COMMERCIALY.

10:11AM 2 Q. RIGHT. AND DID YOU, DID YOU GO TO THE U.S. PATENT AND
10:11AM 3 TRADEMARK OFFICE AND DO ANY RESEARCH ABOUT THAT?

10:11AM 4 A. NO.

10:11AM 5 MR. LEACH: OBJECTION. RELEVANCE.

10:11AM 6 THE COURT: I'LL LET THE ANSWER REMAIN.

10:11AM 7 YOU CAN CONTINUE.

10:11AM 8 BY MR. COOPERSMITH:

10:11AM 9 Q. OKAY. LET'S GO TO EXHIBIT 1853. THAT'S ALREADY IN
10:12AM 10 EVIDENCE.

10:12AM 11 DO YOU SEE IT ON YOUR SCREEN?

10:12AM 12 A. YES.

10:12AM 13 Q. OKAY. AND YOU DISCUSSED THIS WITH MR. LEACH YESTERDAY?

10:12AM 14 A. YES.

10:12AM 15 Q. AND THIS WAS A DOCUMENT THAT YOU LOOKED AT IN CONNECTION
10:12AM 16 WITH YOUR WORK WITH THE THERANOS INVESTMENT?

10:12AM 17 A. YES.

10:12AM 18 Q. OKAY. LET'S JUST GO THROUGH A FEW POINTS ON IT.

10:12AM 19 SO DO YOU SEE THAT IT SAYS PROJECTED STATEMENT OF INCOME?

10:12AM 20 DO YOU SEE THAT?

10:12AM 21 A. YES.

10:12AM 22 Q. AND THAT THERE'S COLUMNS FOR A PERIOD ENDING JANUARY --

10:12AM 23 I'M SORRY, A PERIOD ENDING DECEMBER 31ST, 2014, AND A PERIOD
10:12AM 24 ENDING DECEMBER 31ST, 2015.

10:12AM 25 DO YOU SEE THAT?

10:12AM 1

A. YES.

10:12AM 2

Q. AND YOU ASSUMED THAT THE PROJECTIONS WERE REALLY APPLYING TO 2015; RIGHT?

10:12AM 3

10:12AM 4

A. I ASSUMED THAT THE PROJECTIONS -- YES.

10:13AM 5

Q. OKAY. THE -- IF YOU GO THROUGH IT, THOUGH, YOU SEE

10:13AM 6

THERE'S A SECTION RIGHT THERE ON "LAB SERVICES FROM U.S. RETAIL PHARMACIES"?

10:13AM 7

10:13AM 8

A. YES.

10:13AM 9

Q. AND I THINK YOUR TESTIMONY WAS THAT IT WOULD BE EITHER WALGREENS OR SAFEWAY; RIGHT?

10:13AM 10

10:13AM 11

A. YES.

10:13AM 12

Q. AND IT DIDN'T MATTER TO RDV IF IT WAS SAFEWAY IN PARTICULAR; RIGHT?

10:13AM 13

10:13AM 14

A. NO.

10:13AM 15

Q. IT COULD BE ANOTHER RETAIL PHARMACY?

10:13AM 16

A. NO. BUT IT WAS IMPORTANT TO US THAT THEY HAD CONTRACTS WITH SAFEWAY AND WALGREENS THAT SUPPORT THE 2015 PROJECTION.

10:13AM 17

10:13AM 18

Q. RIGHT. BUT IF IT ENDED UP THAT THE -- ANOTHER PHARMACY

10:13AM 19

BESIDES WALGREENS WAS ANOTHER ONE, LIKE, FOR EXAMPLE, CVS, THAT WOULDN'T HAVE MATTERED; RIGHT?

10:13AM 20

10:13AM 21

A. THAT WOULD HAVE BEEN FINE.

10:13AM 22

BUT WHAT WE WERE RELYING ON WAS THE FACT THAT THEY HAD THESE CONTRACTS WITH THESE TWO INDIVIDUALS.

10:13AM 23

10:13AM 24

Q. RIGHT, THE OPPORTUNITY --

10:13AM 25

A. THESE TWO COMPANIES.

10:13AM 1 Q. THE OPPORTUNITY TO ROLL OUT WITH THESE TWO COMPANIES?

10:14AM 2 A. RIGHT.

10:14AM 3 Q. BUT IF THEY ENDED UP SUBSTITUTING CVS FOR SAFEWAY, THAT

10:14AM 4 WOULDN'T HAVE BEEN A BIG DEAL?

10:14AM 5 A. NO.

10:14AM 6 Q. IF YOU GO TO THE NEXT LINE, "LAB SERVICES REVENUE FROM

10:14AM 7 PHYSICIANS OFFICES."

10:14AM 8 A. YES.

10:14AM 9 Q. YOU UNDERSTOOD THAT WOULD BE HAVING PHYSICIANS' OFFICES

10:14AM 10 USE THERANOS FOR THEIR BLOOD TESTING SERVICES?

10:14AM 11 A. YES.

10:14AM 12 Q. AND THEN SAME WITH "LAB SERVICES REVENUE FROM HOSPITALS"?

10:14AM 13 A. YES.

10:14AM 14 Q. AND THERE'S ANOTHER ONE BELOW THAT, "ON SITE SERVICES

10:14AM 15 REVENUE FROM HOSPITALS"; RIGHT?

10:14AM 16 A. YES.

10:14AM 17 Q. AND THAT'S A DIFFERENT ITEM, IT APPEARS FROM THE DOCUMENT,

10:14AM 18 COMPARED TO THE LAB SERVICES REVENUE FROM HOSPITAL?

10:14AM 19 A. YES.

10:14AM 20 Q. AND THEN FOR THE ON SITE SERVICES REVENUE FROM HOSPITALS,

10:14AM 21 DO YOU SEE THAT THERE'S NO, NO REVENUE PROJECTION FOR THAT

10:14AM 22 ITEM; RIGHT?

10:14AM 23 A. FOR 2014.

10:15AM 24 Q. RIGHT. THERE IS ONE FOR 2015?

10:15AM 25 A. YES.

10:15AM 1 Q. BUT NOT FOR 2014?

10:15AM 2 A. CORRECT.

10:15AM 3 Q. AND THEN "PHARMACEUTICAL SERVICES."

10:15AM 4 DO YOU SEE THAT?

10:15AM 5 A. YES.

10:15AM 6 Q. AND THERE ARE NUMBERS IN THE PROJECTIONS FOR THOSE; RIGHT?

10:15AM 7 A. YES.

10:15AM 8 Q. AND DO YOU UNDERSTAND THAT IF A PHARMACEUTICAL COMPANY WAS

10:15AM 9 RUNNING A CLINICAL TRIAL AND THEY NEEDED THEIR CLINICAL TRIAL

10:15AM 10 SUBJECTS TO GET BLOOD TESTS, THOSE PEOPLE COULD GO TO WALGREENS

10:15AM 11 OR SOME OTHER LOCATION TO GET THOSE BLOOD TESTS; RIGHT?

10:15AM 12 A. IT WAS OUR UNDERSTANDING THAT THE CLINICAL TRIALS THAT

10:15AM 13 THEY WERE DOING WITH THEIR ANALYZER WAS WITH -- WE WERE

10:15AM 14 ASSUMING THAT WHEN THEY SAID THAT THEY WERE WORKING WITH 10 OF

10:15AM 15 THE TOP 15 PHARMACEUTICAL COMPANIES, THAT THEY HAD THE

10:15AM 16 ANALYZERS AT THEIR CLINICAL TRIALS.

10:15AM 17 Q. RIGHT. BUT THE IDEA WAS TO IN SOME WAY USE THE ANALYZERS

10:15AM 18 IN CONNECTION WITH CLINICAL TRIALS; RIGHT?

10:15AM 19 A. YES.

10:15AM 20 Q. THERANOS'S BLOOD TESTING SERVICES?

10:15AM 21 A. YES.

10:15AM 22 Q. OKAY. NOW, IF YOU HAD GO DOWN THE DOCUMENT -- WELL, LET'S

10:16AM 23 JUST STICK WITH THE SECOND COLUMN. THIS IS THE PERIOD ENDING

10:16AM 24 DECEMBER 31ST, 2015.

10:16AM 25 DO YOU SEE THAT?

10:16AM 1 A. YES.

10:16AM 2 Q. AND YOU UNDERSTOOD THAT TO GET TO THE REVENUE NUMBER FOR

10:16AM 3 THE RETAIL PHARMACIES ITEM, THERE WOULD NEED TO BE 900

10:16AM 4 LOCATIONS; RIGHT?

10:16AM 5 A. YES.

10:16AM 6 Q. AND FEWER LOCATIONS WOULD MEAN FEWER REVENUE, LESS

10:16AM 7 REVENUE?

10:16AM 8 A. YES.

10:16AM 9 Q. OKAY. AND THEN IF YOU GO DOWN, YOU SEE THERE'S AN

10:16AM 10 OPERATING EXPENSES SECTION?

10:16AM 11 A. YES.

10:16AM 12 Q. AND THEN THERE'S A PROJECTION FOR THE RESEARCH AND

10:16AM 13 DEVELOPMENT EXPENSE FOR BOTH YEARS.

10:16AM 14 DO YOU SEE THAT?

10:16AM 15 A. YES.

10:16AM 16 Q. AND THE PROJECTION FOR 2014, YEAR ENDING 2014 IS

10:16AM 17 \$57 MILLION.

10:16AM 18 DO YOU SEE THAT?

10:16AM 19 A. YES.

10:16AM 20 Q. AND THAT'S THE R&D EXPENSE THERANOS WAS PROJECTING; RIGHT?

10:16AM 21 A. YES.

10:17AM 22 Q. AND THEN FOR THE YEAR ENDING 2015, THEY WERE PROJECTING

10:17AM 23 127 MILLION IN R&D EXPENSE?

10:17AM 24 A. YES.

10:17AM 25 Q. OKAY. JUST TO FINISH THIS PAGE, IF YOU GO TO THE

10:17AM 1 DIFFERENT SECTORS THERE, YOU SEE THERE'S ANOTHER ITEM FOR DOD,
10:17AM 2 DEPARTMENT OF DEFENSE?
10:17AM 3 A. YES.
10:17AM 4 Q. AND YOU UNDERSTOOD THAT THAT MEANT DEPARTMENT OF DEFENSE?
10:17AM 5 A. OH, SURE, YEAH.
10:17AM 6 Q. AND THEN IT HAS, FOR THE YEAR ENDING 2014, TO BE
10:17AM 7 DETERMINED, TBD?
10:17AM 8 A. YES.
10:17AM 9 Q. AND THEN FOR THE NEXT YEAR, ALSO TO BE DETERMINED?
10:17AM 10 A. YES.
10:17AM 11 Q. OKAY. LET'S GO TO THE NEXT PAGE OF THE DOCUMENT, PAGE 2.
10:17AM 12 THIS IS THE -- IT'S LIKE A BALANCE SHEET BASICALLY; RIGHT?
10:17AM 13 A. YES.
10:17AM 14 Q. AND IT'S FOR THE PERIOD ENDING JULY 14TH, 2014?
10:17AM 15 A. YES.
10:17AM 16 Q. AND YOU DIDN'T SEE ANY LATER BALANCE SHEET FOR SOME LATER
10:17AM 17 PERIOD IN 2014?
10:17AM 18 A. NO.
10:17AM 19 Q. FOR EXAMPLE, WHEN YOU WERE THERE AT THERANOS IN OCTOBER,
10:18AM 20 YOU DIDN'T GET AN UPDATED ONE FOR OCTOBER OF 2014?
10:18AM 21 A. NO.
10:18AM 22 Q. AND YOU DIDN'T ASK FOR ONE?
10:18AM 23 A. NO.
10:18AM 24 Q. IF YOU SEE THAT -- I'M SORRY. ON THIS PAGE, THERE'S AN
10:18AM 25 ITEM THERE FOR DEFERRED REVENUE AND CUSTOMER DEPOSITS?

10:18AM 1 A. YES.

10:18AM 2 Q. AND THAT'S 168 MILLION AND A LITTLE MORE.

10:18AM 3 DO YOU SEE THAT?

10:18AM 4 A. YES.

10:18AM 5 Q. OKAY. AND YOU HAVE SOME HANDWRITING THERE.

10:18AM 6 IS THAT YOUR HANDWRITING?

10:18AM 7 A. YES.

10:18AM 8 Q. AND A QUESTION MARK?

10:18AM 9 A. YES.

10:18AM 10 Q. AND DID YOU EVER FIND OUT WHAT THAT WAS?

10:18AM 11 A. NOT UNTIL LATER.

10:18AM 12 Q. OKAY. AND LATER YOU FOUND OUT THAT IT WAS MONEY, AT LEAST

10:18AM 13 SOME OF THAT 168 MILLION WAS MONEY FROM WALGREENS THAT THEY

10:18AM 14 PROVIDED TO THERANOS TO HELP FUND A NATIONAL ROLLOUT?

10:18AM 15 A. YES, I FOUND THAT OUT WHEN THERE WAS THE LAWSUIT GOING ON

10:18AM 16 BETWEEN THEM THAT THAT'S WHAT THAT WAS.

10:18AM 17 Q. OKAY. BUT YOU DIDN'T KNOW AT THE TIME?

10:18AM 18 A. NO.

10:18AM 19 Q. OKAY. LET'S TALK ABOUT THE MEETING ON OCTOBER 14TH; OKAY?

10:19AM 20 AND YOU WENT THERE AND YOU HAD SOME DEVOS FAMILY MEMBERS

10:20AM 21 WITH YOU?

10:20AM 22 A. YES, THREE OF THEM.

10:20AM 23 Q. AND THAT WAS DOUG DEVOS?

10:20AM 24 A. DOUG DEVOS, RICK DEVOS, AND CHERI VANDERWEIDE,

10:20AM 25 V-A-N-D-E-R-W-E-I-D-E, DEVOS.

10:20AM 1 Q. AND DOUG AND RICK DEVOS, AT THE TIME IN OCTOBER OF 2014,
10:20AM 2 THEY WERE ON THE RDV INVESTMENT COMMITTEE?
10:20AM 3 A. YES. DOUG WAS THE CHAIRMAN.
10:20AM 4 Q. AT THAT POINT CHERI DEVOS WAS NOT ON THE INVESTMENT
10:20AM 5 COMMITTEE?
10:20AM 6 A. THERE WERE TWO OTHER FAMILY MEMBERS ON THE INVESTMENT
10:20AM 7 COMMITTEE. I'M NOT SURE IF ONE WAS RELATED TO CHERI OR NOT.
10:20AM 8 Q. OKAY. AND YOU ALREADY SAID THE MEETING WAS FOUR, FOUR AND
10:20AM 9 A HALF HOURS OR SOMETHING LIKE THAT; RIGHT?
10:20AM 10 A. YES.
10:20AM 11 Q. AND YOU REMEMBER MR. BALWANI WAS THERE?
10:20AM 12 A. YES.
10:20AM 13 Q. AND MS. HOLMES?
10:20AM 14 A. YES.
10:20AM 15 Q. AND IF I HEARD YOU CORRECTLY YESTERDAY, YOUR TESTIMONY IS
10:20AM 16 THAT MR. BALWANI, HIS PARTICULAR FOCUS AT THE MEETING WAS ON
10:20AM 17 THE FINANCIAL INFORMATION?
10:20AM 18 A. YES.
10:20AM 19 Q. AND MR. BALWANI -- I THINK YOU SAID YESTERDAY THAT THERE
10:21AM 20 WAS A DISCUSSION ABOUT FINANCIAL INFORMATION AT THAT MEETING;
10:21AM 21 RIGHT?
10:21AM 22 A. YES.
10:21AM 23 Q. AND MR. BALWANI LED THAT DISCUSSION?
10:21AM 24 A. YES.
10:21AM 25 Q. AND MR. BALWANI PUT UP SOME ITEMS ON THE SCREEN RELATING

10:21AM 1 TO FINANCIALS; CORRECT?

10:21AM 2 A. IT -- ELIZABETH DID A LOT OF THE TALKING. WE DID SOME
10:21AM 3 TALKING AS WELL.

10:21AM 4 BUT I DO RECALL THE SECTION OF THE DISCUSSION THAT
10:21AM 5 INVOLVED THE FINANCIALS WAS MORE WHEN SUNNY TOOK THE LEAD.

10:21AM 6 Q. OKAY. AND IN THAT DISCUSSION THAT MR. BALWANI LED, HE PUT
10:21AM 7 UP SOME FINANCIAL INFORMATION ON THE SCREEN; RIGHT?

10:21AM 8 A. THOSE TWO PAGES THAT WE JUST LOOKED AT.

10:21AM 9 Q. WELL, OTHER FINANCIAL INFORMATION AS WELL; RIGHT?

10:21AM 10 A. I DON'T BELIEVE SO.

10:21AM 11 Q. OKAY.

10:21AM 12 A. I DON'T RECALL IF THAT WAS THE CASE.

10:21AM 13 Q. IS IT YOUR TESTIMONY TODAY, MS. PETERSON, THAT THE ONLY
10:21AM 14 THING PUT UP ON THE SCREEN WAS THE TWO PAGES OF FINANCIAL
10:21AM 15 INFORMATION THAT WE JUST LOOKED AT?

10:22AM 16 A. THE ONLY TWO THINGS THAT I REMEMBER DISCUSSING WERE
10:22AM 17 THOSE -- ARE THOSE TWO PAGES.

10:22AM 18 Q. OKAY. BUT IS IT YOUR TESTIMONY THAT THERE WAS NOTHING
10:22AM 19 ELSE ON THE SCREEN?

10:22AM 20 A. I DON'T REMEMBER.

10:22AM 21 Q. YOU DON'T REMEMBER ONE WAY OR THE OTHER?

10:22AM 22 A. NO.

10:22AM 23 Q. OKAY. SO IF THERE WAS MORE INFORMATION PRESENTED ON THE
10:22AM 24 SCREEN, YOU JUST CAN'T TELL US ABOUT THAT BECAUSE YOU DON'T
10:22AM 25 REMEMBER IT TODAY; RIGHT?

10:22AM 1 A. CORRECT.

10:22AM 2 Q. OKAY. BUT YOU DO REMEMBER THERE WAS SOME FINANCIAL
10:22AM 3 INFORMATION PUT UP ON THE SCREEN; RIGHT?

10:22AM 4 A. I DO REMEMBER THOSE TWO PAGES, AND THOSE TWO PAGES WERE
10:22AM 5 DISCUSSED BECAUSE THEY MADE CHANGES TO A FEW OF THE NUMBERS,
10:22AM 6 YES.

10:22AM 7 Q. OKAY. BUT YOU CAN'T REMEMBER WHAT ELSE MAY HAVE BEEN ON
10:22AM 8 THE SCREEN?

10:22AM 9 A. NO.

10:22AM 10 MR. LEACH: YOUR HONOR --

10:22AM 11 THE COURT: I THINK WE'VE DEVELOPED THAT.

10:22AM 12 MR. COOPERSMITH: WE ARE, YOUR HONOR. WE ARE DONE
10:22AM 13 WITH THAT.

10:22AM 14 Q. OKAY. LET'S TAKE A LOOK AT EXHIBIT 2120.

10:23AM 15 DO YOU SEE THAT 2120 IS AN EMAIL STRING AMONG YOU AND
10:23AM 16 MR. TUBERGEN?

10:23AM 17 A. YES.

10:23AM 18 Q. AND THIS WAS IN CONNECTION WITH THE THERANOS INVESTMENT?

10:23AM 19 A. YES.

10:23AM 20 Q. AND IT'S AROUND OCTOBER -- WELL, IT'S IN OCTOBER OF 2014?

10:23AM 21 A. OCTOBER 23RD, YES.

10:23AM 22 Q. OKAY. AND OTHER EMAILS EARLIER THAN THAT; RIGHT? WE'LL
10:23AM 23 JUST LOOK AT IT.

10:23AM 24 YOUR HONOR, WE'LL OFFER 2120.

10:23AM 25 MR. LEACH: I DON'T HAVE A COPY OF THIS.

10:23AM 1 THE COURT: I DON'T EITHER. IT'S NOT IN MY BINDER.

10:23AM 2 MR. COOPERSMITH: MAY I SHOW COUNSEL?

10:23AM 3 THE COURT: YES, PLEASE.

10:23AM 4 MR. COOPERSMITH: (HANDING.)

10:24AM 5 YOUR HONOR, IS IT ACCEPTABLE FOR YOU TO LOOK AT IT ON THE

10:24AM 6 SCREEN?

10:24AM 7 THE COURT: YOU'RE SEEKING TO ADMIT IT?

10:24AM 8 MR. COOPERSMITH: YES, YOUR HONOR.

10:24AM 9 THE COURT: ANY OBJECTION?

10:24AM 10 MR. LEACH: I HAVE NO OBJECTION.

10:24AM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:24AM 12 (GOVERNMENT'S EXHIBIT 2120 WAS RECEIVED IN EVIDENCE.)

10:24AM 13 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:24AM 14 Q. LET'S GO TO THE EARLIEST EMAIL IN TIME, MS. PETERSON, AND

10:24AM 15 YOU SEE RICK DEVOS WRITES TO YOU ON OCTOBER 15TH AND HE SAYS,

10:24AM 16 "ARE YOU GOING TO FOLLOW UP WITH YOUR WALGREENS CONTACT ON

10:24AM 17 THERANOS? CURIOUS FOR THEIR ASSESSMENT."

10:24AM 18 DO YOU SEE THAT?

10:24AM 19 A. YES.

10:24AM 20 Q. AND THEN YOU WROTE BACK AND SAY, "HEY RICK, SORRY FOR THE

10:24AM 21 DELAY. I WAS IN-FLIGHT."

10:24AM 22 AND THAT'S BECAUSE YOU WERE ON YOUR WAY BACK FROM

10:24AM 23 CALIFORNIA. RIGHT?

10:24AM 24 A. I DON'T REMEMBER.

10:24AM 25 Q. OKAY. "I PLAN TO REGROUP WITH JERRY TO DISCUSS NEXT STEPS

10:25AM 1 (WE DIDN'T HAVE TIME TODAY TO TOUCH BASE ON THAT ONE GIVEN MY
10:25AM 2 FLIGHT SCHEDULE). I'LL KEEP YOU POSTED."

10:25AM 3 DO YOU SEE THAT?

10:25AM 4 A. YES.

10:25AM 5 Q. AND THEN YOU RESPOND FURTHER A FEW DAYS LATER ON
10:25AM 6 OCTOBER 23RD AND YOU SAY, "JERRY ASKED ME TO HOLD OFF ON THAT
10:25AM 7 INQUIRY. HE SAID HE'D CONNECT WITH YOU ON THOUGHT PROCESS."

10:25AM 8 DO YOU SEE THAT?

10:25AM 9 A. YES.

10:25AM 10 Q. AND THE INQUIRY BEING REFERRED TO THERE IS THE INQUIRY TO
10:25AM 11 A CONTACT AT WALGREENS; RIGHT?

10:25AM 12 A. YES.

10:25AM 13 Q. AND THEN IF YOU GO TO THE FIRST PAGE, YOU SEE AT THE
10:25AM 14 BOTTOM THAT'S OCTOBER 23RD, AND YOU SAY, "SLIGHT TEE-UP JUST SO
10:25AM 15 I DIDN'T LEAVE HIM HANGING... BY THE WAY, I'LL GET YOU WRITE-UP
10:26AM 16 TONIGHT OFF BPOC DINNER.

10:26AM 17 DO YOU SEE THAT?

10:26AM 18 A. YES.

10:26AM 19 Q. AND WHAT WAS THE WRITE-UP YOU WERE REFERRING TO?

10:26AM 20 A. THAT WAS THE APPROVAL DOCUMENT.

10:26AM 21 Q. OKAY. AND THAT'S ONE OF THE EXHIBITS YOU SAW YESTERDAY?

10:26AM 22 A. YES.

10:26AM 23 Q. OKAY. WE'LL GET TO THAT.

10:26AM 24 AND IF WE GO BELOW THAT, ABOVE THAT RATHER, THERE'S
10:26AM 25 ANOTHER EMAIL ON OCTOBER 23RD WHERE YOU WROTE, "THERE'S A BIG

10:26AM 1 HOLE IN THE WRITE-UP THAT I LEFT OPEN FOR A VERY BASIC CAP
10:26AM 2 TABLE."

10:26AM 3 DO YOU SEE THAT?

10:26AM 4 A. YES.

10:26AM 5 Q. "THERE ARE SOME REALLY BASIC PRE- AND POST-DEAL FIGURES
10:26AM 6 THAT I SHOULD GET FROM SUNNY BEFORE I FINALIZE THIS"; RIGHT?

10:26AM 7 A. YES.

10:26AM 8 Q. NOTHING CONTROVERSIAL?

10:26AM 9 A. CORRECT.

10:26AM 10 Q. SO YOU'RE TALKING ABOUT THIS ISSUE OF WANTING THE CAP
10:26AM 11 TABLE THAT YOU DISCUSSED YESTERDAY?

10:26AM 12 A. YES.

10:26AM 13 Q. AND THEN MR. TUBERGEN RESPONDED; RIGHT?

10:26AM 14 A. YES.

10:26AM 15 Q. AND HE WROTE, "I WOULDN'T WORRY ABOUT THAT DETAIL RIGHT
10:26AM 16 NOW. I DO KNOW THEY WILL HAVE SOMEWHERE BETWEEN 500 AND
10:26AM 17 POTENTIALLY 600 MILLION OF NEW CAPITAL COMING IN AT \$17 PER
10:26AM 18 SHARE."

10:26AM 19 AND THEN IF YOU GO DOWN TO THE LAST PART, HE SAYS, "WE
10:26AM 20 DON'T NECESSARILY HAVE TO FOLLOW THE SAME TEMPLATE AS OUR OTHER
10:27AM 21 EQUITY INVESTMENTS."

10:27AM 22 DO YOU SEE THAT?

10:27AM 23 A. YES.

10:27AM 24 Q. AND THEN ABOVE THAT YOU SAY, "I CAN MAKE IT WORK."
10:27AM 25 RIGHT?

10:27AM 1

A. YES.

10:27AM 2

Q. SO THAT'S YOU AND MR. TUBERGEN TALKING ABOUT THE NEED FOR
A CAP TABLE?

10:27AM 3

10:27AM 4

A. YES.

10:27AM 5

THE ONLY REASON WE NEED A CAP TABLE IS TO ESTABLISH OUR
OWNERSHIP, WHICH YOU CAN DO WITH THE SIMPLE MATH THAT HE LAID
OUT.

10:27AM 6

10:27AM 7

10:27AM 8

WHAT I NEEDED IT FOR WAS IN THE FUTURE WHEN WE DID
VALUATIONS.

10:27AM 9

10:27AM 10

Q. OKAY. THANK YOU.

10:27AM 11

ALL RIGHT. LET ME HAVE YOU TAKE A LOOK AT EXHIBIT 10588,
WHICH IS NOT IN EVIDENCE YET.

10:27AM 12

10:28AM 13

OKAY. AND, MS. PETERSON, I THINK YOU REVIEWED SOME OF
THIS WITH MR. LEACH YESTERDAY.

10:28AM 14

10:28AM 15

BUT DO YOU SEE THAT THIS IS A THERANOS INC. SERIES C-2
PREFERRED STOCK AGREEMENT?

10:28AM 16

10:28AM 17

A. YES.

10:28AM 18

Q. STOCK PURCHASE AGREEMENT?

10:28AM 19

A. YES.

10:28AM 20

Q. AND DO YOU UNDERSTAND THAT THIS WAS A FORMAL DOCUMENT THAT
WAS SIGNED TO FACILITATE RDV'S INVESTMENT IN THERANOS?

10:28AM 21

10:28AM 22

A. YES.

10:28AM 23

Q. AND YOU'RE NOT THE SIGNATORY FOR THIS?

10:28AM 24

A. NO.

10:28AM 25

Q. AND THIS WOULD BE SOMEONE AT -- WHO WORKS FOR THE FAMILY?

10:28AM 1 A. IT'S AN EXECUTIVE WITHIN RDV CORP. WHO SIGNS DOCUMENTS.

10:28AM 2 Q. OKAY. AND IN THE CASE OF RDV, WAS THAT ROBERT SCHIERBEEK?

10:28AM 3 A. YES.

10:28AM 4 Q. AND HE'S THE CHIEF OPERATING OFFICER?

10:28AM 5 A. AT THE TIME, YES.

10:28AM 6 Q. OKAY. SO LOOKING AT EXHIBIT 10588, YOU WILL RECOGNIZE

10:29AM 7 THIS AS THE STOCK PURCHASE AGREEMENT IN CONNECTION WITH THE

10:29AM 8 THERANOS INVESTMENT?

10:29AM 9 A. YES.

10:29AM 10 MR. COOPERSMITH: YOUR HONOR, WE OFFER

10:29AM 11 EXHIBIT 10588.

10:29AM 12 MR. LEACH: NO OBJECTION.

10:29AM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:29AM 14 (DEFENDANT'S EXHIBIT 10588 WAS RECEIVED IN EVIDENCE.)

10:29AM 15 BY MR. COOPERSMITH:

10:29AM 16 Q. IF YOU LOOK AT THE FIRST PAGE AND THE TITLE, IT HAS SOME

10:29AM 17 LANGUAGE HERE, BUT YOU UNDERSTAND THAT THIS IS THE AGREEMENT TO

10:29AM 18 PURCHASE THERANOS STOCK; RIGHT?

10:29AM 19 A. CORRECT.

10:29AM 20 Q. OKAY. AND IF YOU LOOK AT PAGE 7, OR RATHER PAGE 6.

10:29AM 21 I THINK MR. LEACH REVIEWED SOME OF THIS INFORMATION WITH

10:29AM 22 YOU, BUT THERE'S A SECTION CALLED "REPRESENTATIONS AND

10:29AM 23 WARRANTIES OF THE INVESTORS"; RIGHT?

10:29AM 24 A. YES.

10:29AM 25 Q. AND RDV IS ONE OF THE INVESTORS?

10:29AM 1 A. YES.

10:29AM 2 Q. SO THESE ARE THINGS THAT RDV IS PROMISING THERANOS?

10:29AM 3 A. YES.

10:29AM 4 Q. OKAY. LET'S LOOK AT SECTION 4.2, "INVESTMENT INTENT.

10:30AM 5 SUCH INVESTOR IS ACQUIRING THE SHARES AND THE CONVERSION SHARES

10:30AM 6 FOR INVESTMENT FOR ITS OWN ACCOUNT, NOT AS A NOMINEE OR AGENT,

10:30AM 7 AND NOT WITH THE VIEW TO, OR FOR RESALE IN CONNECTION WITH, ANY

10:30AM 8 DISTRIBUTION THEREOF, AND SUCH INVESTOR HAS NO PRESENT

10:30AM 9 INTENTION OF SELLING, GRANTING ANY PARTICIPATION IN OR

10:30AM 10 OTHERWISE DISTRIBUTING THE SAME."

10:30AM 11 DO YOU SEE THAT?

10:30AM 12 A. YES.

10:30AM 13 Q. AND SO THAT MEANS THAT RDV AS AN INVESTOR DOESN'T HAVE ANY

10:30AM 14 PRESENT INTENTION AT THAT TIME OF SELLING ITS SHARES; RIGHT?

10:30AM 15 A. THEY DON'T WANT US TO TRANSFER OUR SHARES TO SOMEONE ELSE.

10:30AM 16 THEY WANTED TO KNOW WHO THEIR PARTNERS WERE. AND I'M TELLING

10:30AM 17 THEM THAT WE WON'T TRANSFER THEM.

10:30AM 18 Q. THAT IS WHAT RDV IS PROMISING?

10:30AM 19 A. YES.

10:30AM 20 Q. AND THE NEXT SECTION 4.3, "INVESTMENT EXPERIENCE." IT

10:30AM 21 SAYS, "SUCH INVESTOR, OR ITS PURCHASER REPRESENTATIVE, WITHIN

10:30AM 22 THE MEANING OF REGULATION D, PROMULGATED BY THE SECURITIES AND

10:30AM 23 EXCHANGE COMMISSION," -- INVESTMENT EXPERIENCE, IT JUST SAYS

10:31AM 24 THAT -- I'LL MAKE IT SIMPLER.

10:31AM 25 THIS IS JUST SAYING THAT THE -- RDV, AS SIGNING THIS, IS

10:31AM 1 SAYING THAT RDV HAS SUBSTANTIAL EXPERIENCE IN EVALUATING AND IN
10:31AM 2 INVESTING IN TRANSACTIONS LIKE THIS; RIGHT?

10:31AM 3 A. YES.

10:31AM 4 Q. OKAY. IT ALSO SAYS THAT RDV CAN PROTECT ITS OWN
10:31AM 5 INTERESTS; RIGHT?

10:31AM 6 A. YES.

10:31AM 7 Q. AND THAT RDV HAS THE KNOWLEDGE AND EXPERIENCE IN FINANCIAL
10:31AM 8 AND BUSINESS MATTERS, SO IT'S CAPABLE OF EVALUATING THE MERITS;
10:31AM 9 RIGHT?

10:31AM 10 A. YES.

10:31AM 11 Q. AND THAT WAS TRUE OF RDV; RIGHT?

10:31AM 12 A. YES.

10:31AM 13 Q. AND IT'S A FAIRLY LARGE STAFF OF PEOPLE DEDICATED TO THIS
10:31AM 14 PURPOSE; RIGHT?

10:31AM 15 A. YES.

10:31AM 16 Q. OF WHICH YOU WERE ONE?

10:31AM 17 A. YES.

10:31AM 18 Q. AND YOU SEE 4.4, SPECULATIVE NATURE OF INVESTMENT?

10:32AM 19 A. YES.

10:32AM 20 Q. AND HERE YOU UNDERSTAND THAT RDV IS PROMISING THAT IT
10:32AM 21 UNDERSTANDS AND ACKNOWLEDGES THAT THE COMPANY, MEANING
10:32AM 22 THERANOS, HAS A LIMITED FINANCIAL AND OPERATING HISTORY.

10:32AM 23 DO YOU SEE THAT?

10:32AM 24 A. YES.

10:32AM 25 Q. AND THAT AN INVESTMENT IN THE COMPANY IS HIGHLY

10:32AM 1 SPECULATIVE.

10:32AM 2 DO YOU SEE THAT?

10:32AM 3 A. YES.

10:32AM 4 Q. AND IT INVOLVES SUBSTANTIAL RISKS?

10:32AM 5 A. YES.

10:32AM 6 Q. AND THAT THE INVESTOR, IN THIS CASE RDV, CAN BEAR THE
10:32AM 7 ECONOMIC RISK OF THAT; RIGHT?

10:32AM 8 A. YES.

10:32AM 9 Q. AND THAT EVEN CAN BEAR THE ECONOMIC RISK OF SUFFERING THE
10:32AM 10 COMPLETE LOSS OF THE INVESTMENT; RIGHT?

10:32AM 11 A. YES.

10:32AM 12 Q. OKAY. AND THEN THE NEXT SECTION, 4.5, IS CALLED ACCESS TO
10:32AM 13 DATA.

10:32AM 14 DO YOU SEE THAT?

10:32AM 15 A. YES.

10:32AM 16 Q. AND THE FIRST PART JUST SAYS THAT RDV HAD AN OPPORTUNITY
10:32AM 17 TO ASK QUESTIONS; RIGHT?

10:32AM 18 A. YES.

10:32AM 19 Q. AND RECEIVE OTHER INFORMATION?

10:32AM 20 A. YES.

10:32AM 21 Q. AND THEN IF YOU GO TO THE MIDDLE OF THAT, IT SAYS, "SUCH
10:32AM 22 INVESTOR UNDERSTANDS THAT SUCH DISCUSSIONS, AS WELL AS ANY
10:33AM 23 INFORMATION ISSUED BY THE COMPANY, WERE INTENDED TO DESCRIBE
10:33AM 24 CERTAIN ASPECTS OF THE COMPANY'S BUSINESS AND PROSPECTS, BUT
10:33AM 25 WERE NOT NECESSARILY A THOROUGH OR EXHAUSTIVE DESCRIPTION."

10:33AM 1 DO YOU SEE THAT?

10:33AM 2 A. YES.

10:33AM 3 Q. AND THAT'S SAYING THAT THERE ARE OTHER THINGS THAT
10:33AM 4 THERANOS MIGHT BE DOING THAT WEREN'T IN THE DESCRIPTION THAT
10:33AM 5 THEY GAVE TO RDV; RIGHT?

10:33AM 6 A. YES.

10:33AM 7 Q. IT GOES ON AND SAYS, "SUCH INVESTOR ACKNOWLEDGES THAT ANY
10:33AM 8 BUSINESS PLANS PREPARED BY THE COMPANY HAVE BEEN, AND CONTINUE
10:33AM 9 TO BE, SUBJECT TO CHANGE."

10:33AM 10 DO YOU SEE THAT?

10:33AM 11 A. YES.

10:33AM 12 Q. "AND THAT ANY PROJECTIONS INCLUDED IN SUCH BUSINESS PLANS
10:33AM 13 OR OTHERWISE ARE NECESSARILY SPECULATIVE IN NATURE, AND IT CAN
10:33AM 14 BE EXPECTED THAT SOME OR ALL OF THE ASSUMPTIONS UNDERLYING THE
10:33AM 15 PROJECTIONS WILL NOT MATERIALIZE OR WILL VARY SIGNIFICANTLY
10:33AM 16 FROM ACTUAL RESULTS."

10:33AM 17 DO YOU SEE THAT?

10:33AM 18 A. YES.

10:33AM 19 Q. AND RDV IS PROMISING THERANOS THAT THEY UNDERSTAND THIS;
10:33AM 20 RIGHT?

10:33AM 21 A. YES.

10:33AM 22 Q. OKAY. AND THEN 4.6, GOING TO THAT, THAT'S THE SECTION
10:33AM 23 ABOUT ACCREDITED INVESTOR.

10:34AM 24 DO YOU SEE THAT?

10:34AM 25 A. YES.

10:34AM 1 Q. AND DO YOU UNDERSTAND THAT THAT JUST MEANS AN INVESTOR FOR
10:34AM 2 CERTAIN FINANCIAL WORTH THAT COULD MAKE AN INVESTMENT LIKE
10:34AM 3 THIS; RIGHT?

10:34AM 4 A. YES.

10:34AM 5 Q. SO JUST NOT ANYONE OFF THE STREET COULD MAKE AN INVESTMENT
10:34AM 6 LIKE THIS; RIGHT?

10:34AM 7 A. CORRECT.

10:34AM 8 Q. OKAY. AND THEN IF YOU GO TO THE NEXT PAGE, SECTION 4.9,
10:34AM 9 DO YOU SEE IT SAYS, "NO PUBLIC MARKET"?

10:34AM 10 A. YES.

10:34AM 11 Q. AND SO DO YOU UNDERSTAND THAT THAT MEANS THAT THERE'S NO
10:34AM 12 PUBLIC TRADING OF THERANOS STOCK?

10:34AM 13 A. CORRECT.

10:34AM 14 Q. SO FINDING A BUYER FOR STOCK, IF ANYONE EVER WANTED TO
10:34AM 15 SELL IT, MIGHT BE DIFFICULT; RIGHT?

10:34AM 16 A. CORRECT.

10:34AM 17 Q. YOU COULDN'T JUST GO TO THE NEW YORK STOCK EXCHANGE AND
10:34AM 18 PLACE AN ORDER, LIKE A SALE ORDER OR SOMETHING; RIGHT?

10:34AM 19 A. CORRECT.

10:34AM 20 Q. AND IF YOU GO TO ONE OTHER THING PAGE 17, SECTION 7.8.

10:35AM 21 DO YOU SEE THERE'S A SECTION CALLED "ENTIRE AGREEMENT"?

10:35AM 22 A. YES.

10:35AM 23 Q. AND IT SAYS, "THIS AGREEMENT, INCLUDING THE EXHIBITS
10:35AM 24 ATTACHED HERETO, CONSTITUTE THE FULL AND ENTIRE UNDERSTANDING
10:35AM 25 AND AGREEMENT AMONG THE PARTIES WITH REGARD TO THE SUBJECTS

10:35AM 1 HEREOF AND SUPERSEDE ANY PRIOR AGREEMENTS OR UNDERSTANDING WITH
10:35AM 2 RESPECT TO THE SUBJECT MATTER HEREOF."

10:35AM 3 DO YOU SEE THAT?

10:35AM 4 A. YES, I SEE THAT.

10:35AM 5 Q. AND "THE SUBJECT MATTER HEREOF" WAS RDV'S INVESTMENT IN
10:35AM 6 THERANOS?

10:35AM 7 A. CORRECT.

10:35AM 8 Q. OKAY. IF YOU GO TO PAGE -- WELL, IT MAY NOT HAVE A PAGE
10:35AM 9 NUMBER, BUT THERE'S A SECTION ABOUT MASTER SIGNATURE PAGES.

10:35AM 10 MR. ALLEN, IF YOU GO TO PAGE 18, AND THEN IT'S THREE MORE
10:35AM 11 PAGES AFTER THAT.

10:35AM 12 THERE YOU GO.

10:35AM 13 DO YOU SEE THAT IT SAYS, "MASTER SIGNATURE PAGES OF THE
10:35AM 14 INVESTORS LISTED ON THE SCHEDULE OF INVESTORS HAVE BEEN
10:35AM 15 INTENTIONALLY WITHHELD PER CONFIDENTIALITY AGREEMENTS WITH THE
10:35AM 16 COMPANY."

10:36AM 17 RIGHT?

10:36AM 18 A. YES.

10:36AM 19 Q. AND SO IF YOU COULD TAKE A LOOK AT EXHIBIT 2170.

10:36AM 20 DO YOU SEE THAT EXHIBIT 2170 IS AN EMAIL FROM MR. TUBERGEN
10:36AM 21 TO MR. BALWANI WITH A COPY TO MS. HOLMES AND MS. PETERSON?

10:36AM 22 A. YES.

10:36AM 23 Q. AND THAT'S DATED OCTOBER 31ST?

10:36AM 24 A. YES.

10:36AM 25 Q. AND THAT'S THE SIGNATURE PAGE BASICALLY; RIGHT?

10:36AM 1

A. YES.

10:36AM 2

Q. OKAY.

10:36AM 3

YOUR HONOR, WE OFFER 2170.

10:36AM 4

MR. LEACH: NO OBJECTION, YOUR HONOR.

10:36AM 5

THE COURT: 2170 IS ADMITTED. IT MAY BE PUBLISHED.

10:36AM 6

(GOVERNMENT'S EXHIBIT 2170 WAS RECEIVED IN EVIDENCE.)

10:36AM 7

BY MR. COOPERSMITH:

10:36AM 8

Q. AND IF YOU GO TO THE FIRST PAGE, THAT'S THE EMAIL THAT I

10:36AM 9

WAS JUST TALKING ABOUT; RIGHT?

10:36AM 10

A. YES.

10:36AM 11

Q. AND THEN THE SECOND PAGE IS ACTUALLY THE SIGNATURE PAGE

10:36AM 12

AND THAT'S WHERE MR. SCHIERBEEK'S SIGNATURE APPEARS; RIGHT?

10:36AM 13

A. CORRECT.

10:36AM 14

Q. AND YOU RECOGNIZE THAT?

10:36AM 15

A. YES.

10:36AM 16

Q. AND IT IS DATED OCTOBER 2014?

10:37AM 17

A. YES.

10:37AM 18

Q. AND SO THERE'S A DATE MISSING, BUT IT'S ACTUALLY

10:37AM 19

OCTOBER 31ST; RIGHT?

10:37AM 20

A. YES.

10:37AM 21

Q. OKAY. YOU MENTIONED, BEFORE WE GOT INTO THAT DOCUMENT, AN

10:37AM 22

APPROVAL MEMORANDUM THAT YOU PREPARED.

10:37AM 23

A. YES.

10:37AM 24

Q. AND IF YOU COULD LOOK AT EXHIBIT 2166, WHICH IS ALREADY IN

10:37AM 25

EVIDENCE, THAT'S THE DOCUMENT THAT YOU'RE REFERRING TO?

10:37AM 1

A. YES.

10:37AM 2

Q. AND THIS IS A DOCUMENT THAT YOU PREPARED SO THAT

10:37AM 3

MR. TUBERGEN COULD SIGN IT SIGNIFYING APPROVAL FROM HIS

10:37AM 4

STANDPOINT?

10:37AM 5

A. JERRY SIGNS ON BEHALF OF THE INVESTMENT COMMITTEE.

10:37AM 6

Q. OKAY. BUT THE ACTUAL DECISION IS MADE BY THE INVESTMENT

10:37AM 7

COMMITTEE?

10:37AM 8

A. CORRECT.

10:37AM 9

Q. NOT MR. TUBERGEN?

10:37AM 10

A. CORRECT.

10:37AM 11

Q. OKAY.

10:38AM 12

THE COURT: FOLKS, WHY DON'T YOU STAND UP AND TAKE A

10:38AM 13

STANDING BREAK WHILE WE MOVE TO THE NEXT TOPIC.

10:38AM 14

YOU CAN, TOO, MS. PETERSON, IF YOU WOULD LIKE.

10:38AM 15

THE WITNESS: THANK YOU.

10:38AM 16

(STRETCHING.)

10:39AM 17

BY MR. COOPERSMITH:

10:39AM 18

Q. OKAY. IF YOU COULD TAKE A LOOK, MS. PETERSON, AT

10:39AM 19

EXHIBIT 2098, WHICH IS NOT IN EVIDENCE YET.

10:39AM 20

DO YOU SEE THIS IS AN EMAIL STRING AMONG MR. TUBERGEN,

10:39AM 21

MS. HOLMES, MR. BALWANI, AND OTHERS, INCLUDING YOURSELF ON SOME

10:39AM 22

OF THE EMAILS.

10:39AM 23

DO YOU SEE THAT?

10:39AM 24

A. YES.

10:39AM 25

Q. AN INTERNAL EMAIL STRING WITHIN RDV?

10:39AM 1

A. YES.

10:39AM 2

Q. AND THIS IS RELATING TO THE THERANOS INVESTMENT?

10:39AM 3

A. YES.

10:39AM 4

MR. COOPERSMITH: YOUR HONOR, WE OFFER 2098.

10:39AM 5

MR. LEACH: NO OBJECTION.

10:39AM 6

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:39AM 7

(GOVERNMENT'S EXHIBIT 2098 WAS RECEIVED IN EVIDENCE.)

10:39AM 8

BY MR. COOPERSMITH:

10:39AM 9

Q. OKAY. IF YOU GO TO THE EARLIEST EMAIL IN TIME FROM

10:39AM 10

MR. TUBERGEN ON SEPTEMBER 18TH, HE WRITES, "DEAR ELIZABETH,

10:39AM 11

"WHAT A GREAT PLEASURE IT WAS TO MEET YOU."

10:39AM 12

RIGHT?

10:39AM 13

A. YES.

10:39AM 14

Q. THAT WAS LONG BEFORE -- WELL, NOT LONG BEFORE. IT WAS A

10:40AM 15

MONTH BEFORE THE MEETING AT THERANOS; RIGHT?

10:40AM 16

A. YES.

10:40AM 17

Q. AND THEN THE EMAIL CONTINUES WITH SOME ITEMS AFTER THE

10:40AM 18

MEETING.

10:40AM 19

SO IF YOU GO TO THE EMAIL FROM MR. TUBERGEN ON

10:40AM 20

OCTOBER 19TH AT 7:47 A.M., DO YOU SEE THAT IT SAYS, "THANK YOU

10:40AM 21

SO VERY MUCH FOR OUR MEETING TUESDAY"?

10:40AM 22

DO YOU SEE THAT?

10:40AM 23

A. YES.

10:40AM 24

Q. AND IN THE SECOND PARAGRAPH OF THAT, IT SAYS, "WE WOULD

10:40AM 25

LOVE TO MOVE FORWARD AND BE A PART OF THE NEW SHAREHOLDER BASE

10:40AM 1 YOU ARE ASSEMBLING. AS WE DISCUSSED, AN INVESTMENT OF
10:40AM 2 \$100 MILLION SEEMS TO FIT, IF THAT WORKS FOR YOU AND THE
10:40AM 3 COMPANY."

10:40AM 4 DO YOU SEE THAT?

10:40AM 5 A. YES.

10:40AM 6 Q. AND ACTUALLY VERBALLY THE MEMBERS OF THE DEVOS FAMILY AT
10:40AM 7 THE MEETING ON OCTOBER 14TH AT THERANOS COMMITTED TO A
10:40AM 8 \$100 MILLION INVESTMENT?

10:40AM 9 A. THEY DIDN'T COMMIT TO 100 MILLION, BUT THEY DEFINITELY
10:40AM 10 TALKED ABOUT THE 100 MILLION.

10:40AM 11 THEY ASKED ELIZABETH IF THAT WAS APPROPRIATE SIZING GIVEN
10:41AM 12 SOME OF THE OTHER INVESTORS.

10:41AM 13 THEY MAY HAVE SAID WE WOULD LIKE TO DO 100 MILLION, BUT WE
10:41AM 14 STILL HAVE TO GO THROUGH OUR PROCESS OF APPROVING IT BEFORE
10:41AM 15 IT'S ACTUALLY FORMALLY COMMITTED.

10:41AM 16 Q. OKAY.

10:41AM 17 A. BUT, YES, AT THE MEETING -- WE WENT INTO THE MEETING
10:41AM 18 THINKING WE WOULD DO 50, AND AFTER THE MEETING -- OR DURING THE
10:41AM 19 MEETING IT WAS DISCUSSED SIZING OF THE INVESTMENT.

10:41AM 20 AND THEN I DO RECALL US DISCUSSING IT OUTSIDE OF THE
10:41AM 21 MEETING IN THE PARKING GARAGE, OR PARKING LOT, BECAUSE I WAS
10:41AM 22 GOING A DIFFERENT DIRECTION, AND THEY WANTED ME TO WORK UP THE
10:41AM 23 APPROVAL DOCUMENT FOR THE 100 MILLION.

10:41AM 24 Q. OKAY. BUT IF YOU COULD GO TO THAT BINDER OF YOUR PRIOR
10:41AM 25 TESTIMONY, MS. PETERSON.

10:42AM 1 AND THE QUESTION I WANT TO ASK YOU IS, ISN'T IT THE CASE
10:42AM 2 THAT BEFORE THE INVESTMENT MEMO, THAT APPROVAL MEMO THAT YOU
10:42AM 3 WROTE, THE COMMITMENT HAD ALREADY BEEN MADE VERBALLY?

10:42AM 4 A. UM, IT WAS DEFINITELY SAID. I MEAN "COMMITMENT" TO ME
10:42AM 5 MEANS IT'S APPROVED AND DONE, AND THERE'S STILL MORE STEPS TO
10:42AM 6 GO.

10:42AM 7 BUT, YES, THEY DID COMMIT, THEY DID COMMIT VERBALLY THAT
10:42AM 8 THEY WANTED TO DO 100 MILLION. IT WAS UNDERSTOOD.

10:42AM 9 BUT WE STILL HAD TO TALK ABOUT IT INTERNALLY, AND ALSO
10:42AM 10 STILL GO THROUGH OUR PROCESS.

10:42AM 11 Q. OKAY. THANK YOU.

10:42AM 12 LET'S GO BACK TO THE EXHIBIT THAT WE WERE LOOKING AT,
10:42AM 13 WHICH IS 2098. OKAY?

10:42AM 14 A. YES.

10:42AM 15 Q. AND IF YOU GO TO PAGE 3 -- I GUESS IT STARTS ON PAGE 2
10:42AM 16 FROM MR. TUBERGEN TO YOU ON OCTOBER 20TH.

10:43AM 17 DO YOU SEE THAT?

10:43AM 18 A. YES.

10:43AM 19 Q. AND HE WRITES, "DETAIL -- I JUST REREAD THE ATTACHED EMAIL
10:43AM 20 CHAIN AND NOTICED I OMITTED YOU IN REFERENCING OUR MEETING. MY
10:43AM 21 APOLOGIES, AN OVERSIGHT ON MY PART THAT WAS CERTAINLY NOT
10:43AM 22 INTENTIONAL. GOOD NEWS IS WE ARE IN AND I'M VERY ENCOURAGED BY
10:43AM 23 THIS DEAL.

10:43AM 24 "THANKS FOR YOUR HELP ON THIS, LISA."

10:43AM 25 DO YOU SEE THAT?

10:43AM 1 A. YES.

10:43AM 2 Q. AND YOU WROTE BACK, "NO WORRIES. I'LL DOCUMENT SOMETHING

10:43AM 3 FOR THE FILE THAT YOU CAN SIGN AS 'APPROVED.'"

10:43AM 4 DO YOU SEE THAT?

10:43AM 5 A. YES.

10:43AM 6 Q. "LET ME KNOW HOW I CAN BE HELPFUL GOING FORWARD. WOULD

10:43AM 7 LOVE TO STAY REMOTELY CONNECTED ON THIS AS IT REALLY FASCINATES

10:43AM 8 ME."

10:43AM 9 DO YOU SEE THAT?

10:43AM 10 A. YES.

10:43AM 11 Q. SO A PROFESSIONAL RESPONSE TO MR. TUBERGEN?

10:43AM 12 A. YES.

10:43AM 13 Q. AND THEN YOU SENT ANOTHER EMAIL TO SOMEONE NAMED

10:43AM 14 PAT LACROMBE?

10:43AM 15 A. YES.

10:43AM 16 Q. SOMEONE YOU THOUGHT YOU COULD CONFIDE IN?

10:43AM 17 A. YES.

10:43AM 18 Q. AND YOU WROTE "DIDN'T EVEN MENTION MY NAME"; RIGHT?

10:43AM 19 A. YES.

10:43AM 20 Q. AND THAT'S REFERRING TO MR. TUBERGEN?

10:44AM 21 A. YES.

10:44AM 22 Q. "WHAT A JOKE"; RIGHT?

10:44AM 23 A. YES.

10:44AM 24 Q. AND YOU SAID, "THAT STINGS BIG TIME AFTER PULLING AN

10:44AM 25 ALL-NIGHTER GETTING PREPARED. WHY DON'T I EVER LEARN?"

10:44AM 1 RIGHT?

10:44AM 2 A. YES.

10:44AM 3 Q. AND THAT'S HOW YOU FELT AT THE TIME?

10:44AM 4 A. YES. NO ONE LIKES TO BE SLIGHTED BY THEIR BOSS.

10:44AM 5 Q. RIGHT.

10:44AM 6 A. BUT HE DID EMAIL ME BACK AND HE SAID, I'M SORRY I OMITTED

10:44AM 7 YOU, AND I FELT A LOT BETTER ABOUT THAT.

10:44AM 8 Q. AND THAT WAS NICE OF HIM?

10:44AM 9 A. YEAH.

10:44AM 10 Q. ALL RIGHT. LET'S TAKE A LOOK AT EXHIBIT 13987.

10:44AM 11 13987 IS AN EMAIL THAT YOU SENT TO COLLEAGUES WITHIN RDV?

10:45AM 12 A. YES.

10:45AM 13 Q. AND A RESPONSE FROM ANDREW MASON?

10:45AM 14 A. YES.

10:45AM 15 Q. AND WHO IS ANDREW MASON?

10:45AM 16 A. HE JUST WORKS IN THE INVESTMENT GROUP.

10:45AM 17 Q. OKAY. AND THIS IS ON NOVEMBER 5TH, 2014?

10:45AM 18 A. YES.

10:45AM 19 Q. AND SO THIS IS FIVE DAYS AFTER THE INVESTMENT WAS ACTUALLY

10:45AM 20 MADE; RIGHT?

10:45AM 21 A. YES.

10:45AM 22 MR. COOPERSMITH: YOUR HONOR, WE OFFER

10:45AM 23 EXHIBIT 13987.

10:45AM 24 MR. LEACH: NO OBJECTION, YOUR HONOR.

10:45AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:45AM 1 (DEFENDANT'S EXHIBIT 13987 WAS RECEIVED IN EVIDENCE.)

10:45AM 2 BY MR. COOPERSMITH:

10:45AM 3 Q. OKAY. LOOKING AT THE BOTTOM EMAIL FROM NOVEMBER 5TH, YOU
10:45AM 4 WROTE TO MR. MASON AND OTHERS, "JERRY WANTS TO BRING THERANOS
10:45AM 5 TO IC."

10:45AM 6 DO YOU SEE THAT?

10:45AM 7 A. YES.

10:45AM 8 Q. AND THAT'S INVESTMENT COMMITTEE?

10:45AM 9 A. YES.

10:45AM 10 Q. "NOT SURE WHEN THAT WILL BE, NOR IS IT RELEVANT GIVEN
10:45AM 11 WE'VE FUNDED, BUT FYI, I WON'T HAVE SIGNATURE ON APPROVAL DOC
10:45AM 12 FOR A BIT."

10:45AM 13 DO YOU SEE THAT?

10:45AM 14 A. YES.

10:45AM 15 Q. AND SO AT THIS POINT THE APPROVAL MEMO THAT YOU WROTE HAD
10:45AM 16 NOT BEEN SIGNED; RIGHT?

10:46AM 17 A. NO.

10:46AM 18 Q. AND THAT WAS AFTER THE INVESTMENT WAS ALREADY MADE?

10:46AM 19 A. IT WAS. BUT THEY FLEW HOME TOGETHER AND I KNOW THEY
10:46AM 20 DISCUSSED THE INVESTMENT, AND GIVEN THAT THERE ARE THREE
10:46AM 21 MEMBERS OF THE INVESTMENT COMMITTEE ON THE PLANE ON THE WAY
10:46AM 22 HOME, JERRY HAD TOLD ME THAT IT WAS APPROVED VERBALLY BY THE
10:46AM 23 INVESTMENT COMMITTEE.

10:46AM 24 Q. RIGHT.

10:46AM 25 A. BUT HE WANTED TO TAKE THE MEMO THROUGH BECAUSE THERE WERE

10:46AM 1 SOME MEMBERS THAT WEREN'T ON THIS TRIP.

10:46AM 2 Q. OKAY. SO ON THE WAY BACK FROM CALIFORNIA ON THE RDV JET,
10:46AM 3 THEN THE INVESTMENT COMMITTEE PEOPLE WERE ON THAT PLANE; RIGHT?

10:46AM 4 A. YES, AND THEY WERE AT THE MEETING IN PALO ALTO.

10:46AM 5 Q. RIGHT.

10:46AM 6 A. YES.

10:46AM 7 Q. SO THERE WAS NO NEED TO HAVE AN INVESTMENT COMMITTEE
10:46AM 8 MEETING PRIOR TO INVESTMENT?

10:46AM 9 A. THEY DID THAT EITHER ON THE PHONE -- THAT'S JERRY'S DOMAIN
10:46AM 10 OF GETTING THE OKAY FROM THE INVESTMENT COMMITTEE FOR ME TO
10:46AM 11 FUND.

10:46AM 12 Q. OKAY. AND YOU DIDN'T ATTEND ANY INVESTMENT COMMITTEE
10:47AM 13 MEETING; CORRECT?

10:47AM 14 A. NO.

10:47AM 15 Q. AND, IN FACT, YOU DON'T KNOW WHETHER ANY OF YOUR MEMOS
10:47AM 16 WERE EVER READ BY THE INVESTMENT COMMITTEE?

10:47AM 17 A. THE, THE EARLY MEMO, THE FIRST MEMO WAS DEFINITELY READ
10:47AM 18 BECAUSE WE WENT THROUGH IT IN DETAIL ON THE PLANE ON THE WAY
10:47AM 19 OUT TO THE MEETING TOGETHER.

10:47AM 20 Q. OKAY. YOU DON'T KNOW WHETHER -- LET'S START WITH THE
10:47AM 21 SECOND ONE.

10:47AM 22 YOU DON'T KNOW WHETHER THE SECOND MEMO WAS EVER READ?

10:47AM 23 A. I DON'T, NO.

10:47AM 24 Q. AND THE FIRST ONE -- WELL, YOU WROTE TWO MEMOS; RIGHT?

10:47AM 25 A. YES.

10:47AM 1 Q. AND ONE WAS THE ONE ON OCTOBER 3RD THAT WE LOOKED AT;
10:47AM 2 RIGHT?

10:47AM 3 A. YES, THAT WAS SENT ON THE 12TH, CORRECT.

10:47AM 4 Q. OKAY. AND THE OTHER ONE WAS THE APPROVAL MEMO THAT WE
10:47AM 5 TALKED ABOUT; RIGHT?

10:47AM 6 A. YES.

10:47AM 7 Q. AND YOU DON'T KNOW WHETHER EITHER OF THOSE WERE ACTUALLY
10:47AM 8 READ BY THE INVESTMENT COMMITTEE; CORRECT?

10:47AM 9 A. LIKE I SAID, THERE ARE THREE PEOPLE THAT WERE ON THE
10:47AM 10 INVESTMENT COMMITTEE, INCLUDING THE CHAIRMAN THAT WAS AT THE
10:47AM 11 MEETING, AND WE TALKED ABOUT THE FIRST MEMO AT LENGTH ON THE
10:48AM 12 WAY OUT. THERE WAS FOUR HOURS ON THE PLANE ON THE WAY OUT
10:48AM 13 THERE.

10:48AM 14 SO, YES, THAT WAS THOROUGHLY REVIEWED AND DISCUSSED.
10:48AM 15 THAT'S WHEN WE DISCUSSED WHETHER WE SHOULD TALK TO WALGREENS OR
10:48AM 16 NOT.

10:48AM 17 AND THEN ON THE WAY HOME, I WAS NOT ON THE PLANE, BUT IT
10:48AM 18 WAS -- THERE WAS APPROVAL RECEIVED BY JERRY. OTHERWISE I
10:48AM 19 COULDN'T HAVE WIRED THE MONEY.

10:48AM 20 Q. OKAY. LET'S LOOK AT SOME PRIOR TESTIMONY AT 28412 IS THE
10:48AM 21 EXHIBIT NUMBER. IT SHOULD BE IN YOUR TESTIMONY BINDER,
10:48AM 22 MS. PETERSON.

10:48AM 23 A. YES.

10:48AM 24 Q. AND IF YOU COULD TAKE A LOOK AT PAGE 4742.
10:49AM 25 DO YOU HAVE THAT?

10:49AM 1 A. YES.

10:49AM 2 Q. AND THIS WAS PRIOR TESTIMONY THAT YOU GAVE IN CONNECTION

10:49AM 3 WITH THE THERANOS MATTER?

10:49AM 4 A. YES.

10:49AM 5 Q. AND YOU WERE UNDER OATH WHEN YOU WERE TESTIFYING?

10:49AM 6 A. YES, YES.

10:49AM 7 Q. AND YOU KNEW YOU HAD TO TELL THE TRUTH; RIGHT?

10:49AM 8 A. YES.

10:49AM 9 Q. AND YOU WERE ASKED THE QUESTION ABOUT THE MEMOS, PLURAL;

10:49AM 10 RIGHT?

10:49AM 11 A. YES.

10:49AM 12 Q. AND YOU WERE ASKED A QUESTION ABOUT WHETHER YOU KNOW

10:49AM 13 WHETHER ANY OF THE MEMOS WERE EVER READ BY THE INVESTMENT

10:49AM 14 COMMITTEE; RIGHT?

10:49AM 15 A. YES.

10:49AM 16 Q. AND YOU SAID CORRECT, MEANING YOU DIDN'T KNOW IF THEY READ

10:49AM 17 THE MEMOS OR NOT; RIGHT?

10:49AM 18 A. I CAN'T SAY THAT THEY READ THEM, BUT WE DEFINITELY

10:49AM 19 DISCUSSED THEM AT LENGTH ON THE PLANE TO CLARIFY THAT.

10:49AM 20 Q. THAT WAS MY QUESTION.

10:49AM 21 A. SORRY.

10:49AM 22 Q. YOU DON'T KNOW WHETHER THE MEMOS WERE EVER READ BY THE

10:49AM 23 INVESTMENT COMMITTEE; CORRECT?

10:49AM 24 A. I CAN'T SAY THAT SOMEONE PHYSICALLY READ THEM, NO.

10:50AM 25 BUT WE DEFINITELY WENT THROUGH THEM AND DISCUSSED THEM ON

10:50AM 1 THE PLANE.

10:50AM 2 Q. AND DO YOU HAVE ANY NOTES OF THOSE CONVERSATIONS?

10:50AM 3 A. NO.

10:50AM 4 (PAUSE IN PROCEEDINGS.)

10:50AM 5 MR. COOPERSMITH: CAN I HAVE A MOMENT TO CONFER WITH

10:50AM 6 MY COLLEAGUES, YOUR HONOR?

10:50AM 7 THE COURT: YES.

10:50AM 8 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

10:51AM 9 MR. COOPERSMITH: NO FURTHER QUESTIONS, YOUR HONOR.

10:51AM 10 THE COURT: REDIRECT?

10:51AM 11 MR. LEACH: YES, YOUR HONOR, BRIEFLY.

10:51AM 12 **REDIRECT EXAMINATION**

10:51AM 13 BY MR. LEACH:

10:52AM 14 Q. DO YOU NEED A GLASS OF WATER, MS. PETERSON?

10:52AM 15 A. NO, I'M GOOD.

10:52AM 16 Q. GOOD MORNING.

10:52AM 17 A. GOOD MORNING.

10:52AM 18 Q. I JUST HAVE A FEW FOLLOW-UP QUESTIONS FOR YOU FOLLOWING

10:52AM 19 MR. COOPERSMITH'S EXAMINATION.

10:52AM 20 MS. WACHS, IF WE COULD PLEASE DISPLAY EXHIBIT 4858.

10:52AM 21 DO YOU RECALL QUESTIONS ABOUT THIS POWERPOINT THAT WAS

10:52AM 22 AMONG THE DUE DILIGENCE MATERIALS RDV RECEIVED FROM THERANOS?

10:52AM 23 A. YES.

10:52AM 24 Q. AND YOU WERE ASKED SOME QUESTIONS ABOUT WHETHER THE

10:52AM 25 COMMENTS MS. HOLMES AND MR. BALWANI MADE WERE ASPIRATIONAL OR

10:52AM 1 PRESENT TENSE.

10:52AM 2 DO YOU RECALL SOME OF THOSE QUESTIONS?

10:52AM 3 A. YES.

10:52AM 4 Q. LET ME DRAW YOUR ATTENTION TO PAGE 3.

10:53AM 5 DO YOU SEE THE LINE, "THERANOS'S PROPRIETARY, PATENTED

10:53AM 6 TECHNOLOGY RUNS COMPREHENSIVE BLOOD TESTS FROM A FINGERSTICK"?

10:53AM 7 DO YOU SEE THAT LANGUAGE?

10:53AM 8 A. YES.

10:53AM 9 Q. AND DID YOU UNDERSTAND "RUNS" TO BE PRESENT TENSE?

10:53AM 10 A. YES.

10:53AM 11 Q. DID YOU THINK THIS STATEMENT WAS ASPIRATIONAL?

10:53AM 12 A. NO.

10:53AM 13 Q. THIS SAYS, "GENERATES SIGNIFICANTLY HIGHER INTEGRITY DATA

10:53AM 14 THAN CURRENTLY POSSIBLE."

10:53AM 15 DO YOU SEE THAT?

10:53AM 16 A. YES.

10:53AM 17 Q. AND DID YOU THINK THAT WAS PRESENT TENSE?

10:53AM 18 A. YES.

10:53AM 19 Q. AND DID YOU THINK THAT WAS ASPIRATIONAL?

10:53AM 20 A. NO.

10:53AM 21 Q. IN THE THIRD PARAGRAPH, IT SAYS, "CURRENT AND PAST CLIENTS

10:53AM 22 INCLUDE 10 OF THE TOP 15 MAJOR PHARMACEUTICAL COMPANIES."

10:53AM 23 DO YOU SEE THAT?

10:53AM 24 A. YES.

10:53AM 25 Q. AND IT GOES ON TO TALK ABOUT MILITARY ORGANIZATIONS.

10:53AM 1 DO YOU SEE THAT?

10:53AM 2 A. YES.

10:53AM 3 Q. AND IN YOUR MEETING WITH MS. HOLMES AND MR. BALWANI IN
10:53AM 4 OCTOBER, DID THEY SAY THE DEVICE WAS BEING USED ON MILITARY
10:53AM 5 HELICOPTERS?

10:53AM 6 A. THAT IT HAD BEEN.

10:53AM 7 Q. OKAY. WAS THERE ANYTHING ASPIRATIONAL ABOUT THAT?

10:54AM 8 A. NO.

10:54AM 9 Q. LET'S LOOK AT PAGE 7.

10:54AM 10 DO YOU SEE THIS LISTING OF PROFICIENCY TESTING RESULTS?

10:54AM 11 A. YES.

10:54AM 12 Q. FROM NATIONALLY RECOGNIZED AGENCIES?

10:54AM 13 A. YES.

10:54AM 14 Q. AND I THINK YOU SAID ON DIRECT THAT YOU BELIEVED THESE TO
10:54AM 15 RELATE TO THE THERANOS ANALYZER, NOT SOME THIRD PARTY DEVICE?

10:54AM 16 A. YES.

10:54AM 17 Q. AND DID YOU UNDERSTAND THIS TO BE ASPIRATIONAL?

10:54AM 18 A. NO.

10:54AM 19 Q. WAS THIS SOMETHING THAT HAD HAPPENED IN THE PAST?

10:54AM 20 A. YES, SINCE 2011.

10:54AM 21 Q. LET ME DRAW YOUR ATTENTION TO PAGE 8, AND I DRAW YOUR
10:54AM 22 ATTENTION TO THE FIRST PARAGRAPH UNDER "VALIDATION OF THERANOS
10:54AM 23 TESTS."

10:54AM 24 DO YOU SEE WHERE IT SAYS, "THERANOS HAS BEEN
10:54AM 25 COMPREHENSIVELY VALIDATED OVER THE COURSE OF THE LAST SEVEN

10:54AM 1 YEARS BY TEN OF THE FIFTEEN LARGEST PHARMACEUTICAL COMPANIES."

10:55AM 2 DID YOU CONSIDER THAT TO BE ASPIRATIONAL?

10:55AM 3 A. NO.

10:55AM 4 Q. AND LET'S LOOK AT PAGE 28, PLEASE.

10:55AM 5 DO YOU SEE THE LINE, "THERANOS RUNS ANY TEST AVAILABLE IN

10:55AM 6 CENTRAL LABORATORIES, AND PROCESSES ALL SAMPLE TYPES"?

10:55AM 7 A. YES.

10:55AM 8 Q. AND THAT'S -- DID YOU CONSIDER THAT TO BE ASPIRATIONAL?

10:55AM 9 A. NO.

10:55AM 10 Q. DID YOU THINK THAT WAS SOMETHING THAT THERANOS WAS

10:55AM 11 CURRENTLY DOING?

10:55AM 12 A. YES.

10:55AM 13 Q. WITH ITS ANALYZER?

10:55AM 14 A. YES.

10:55AM 15 Q. AND ALL OF THAT IS BASED ON YOUR CONVERSATIONS WITH

10:55AM 16 MS. HOLMES AND MR. BALWANI IN PALO ALTO?

10:55AM 17 A. YES.

10:55AM 18 Q. THANK YOU, MS. WACHS. WE CAN TAKE THAT DOWN.

10:55AM 19 AND I THINK YOU WERE ASKED SOME QUESTIONS ABOUT THE

10:55AM 20 THERANOS WEBSITE.

10:55AM 21 A. YES.

10:55AM 22 Q. AND DO YOU RECALL SOME QUESTIONS FROM MR. COOPERSMITH

10:55AM 23 ABOUT THAT?

10:55AM 24 A. YES.

10:55AM 25 Q. AND IF WE COULD PLEASE DISPLAY EXHIBIT 5805.

10:56AM 1 MAY I HAVE ONE MOMENT, YOUR HONOR?

10:56AM 2 THE COURT: YES.

10:56AM 3 (PAUSE IN PROCEEDINGS.)

10:56AM 4 BY MR. LEACH:

10:56AM 5 Q. DO YOU RECALL BEING ASKED QUESTIONS ABOUT EXHIBIT 5805?

10:56AM 6 A. YES.

10:56AM 7 Q. OKAY. IF WE COULD GO TO PAGE 2, PLEASE, MS. WACHS, AND IF
10:56AM 8 WE COULD PLEASE ZOOM IN ON THE PART THAT SAYS, "ONE DROP. A
10:56AM 9 WORLD OF ANSWERS."

10:56AM 10 AND IF THERE'S A WAY WE CAN -- CAN WE TRY ZOOMING IN ON
10:56AM 11 THAT AGAIN, MS. WACHS.

10:56AM 12 DO YOU SEE WHERE IT SAYS, "OUR LABORATORY CAN PRECISELY
10:56AM 13 ANALYZE TINY SAMPLES. A FEW DROPS ARE ALL WE NEED TO PERFORM
10:57AM 14 MOST TESTS."

10:57AM 15 DO YOU SEE THAT LANGUAGE?

10:57AM 16 A. YES.

10:57AM 17 Q. IS THAT CONSISTENT WITH WHAT MS. HOLMES AND MR. BALWANI
10:57AM 18 TOLD YOU IN YOUR MEETING IN PALO ALTO?

10:57AM 19 A. YES.

10:57AM 20 Q. IF WE CAN GO DOWN A LITTLE BIT FURTHER TO THE LINE THAT
10:57AM 21 SAYS, "A FULL RANGE OF TESTS. A FRACTION OF THE COST."

10:57AM 22 DO YOU SEE WHERE IT SAYS, "WE OFFER A FULL RANGE OF
10:57AM 23 LABORATORY TESTS, FROM COMMON PANELS TO SPECIALIZED TESTS. ALL
10:57AM 24 WITH SPEED AND THE HIGHEST LEVELS OF QUALITY."

10:57AM 25 DO YOU SEE THAT LANGUAGE?

10:57AM 1

A. YES.

10:57AM 2

Q. AND IS THAT CONSISTENT WITH WHAT MS. HOLMES AND

10:57AM 3

MR. BALWANI TOLD YOU IN THE MEETING IN PALO ALTO?

10:57AM 4

A. YES.

10:57AM 5

Q. IF WE CAN GO TO THE NEXT PAGE, MS. WACHS.

10:57AM 6

THERE'S A LINE THAT SAYS, "A FEW DROPS IS ALL IT TAKES."

10:57AM 7

DO YOU SEE ANOTHER REFERENCE TO THE HIGHEST LEVEL OF

10:57AM 8

QUALITY IN THIS PARAGRAPH?

10:57AM 9

A. YES.

10:57AM 10

Q. AND IS THAT CONSISTENT WITH WHAT MS. HOLMES AND

10:58AM 11

MR. BALWANI TOLD YOU AT THE MEETING IN PALO ALTO?

10:58AM 12

A. YES.

10:58AM 13

Q. OKAY. THANK YOU, MS. WACHS. WE CAN TAKE THAT DOWN.

10:58AM 14

YESTERDAY YOU WERE ASKED SOME QUESTIONS ABOUT THE PARLOFF

10:58AM 15

ARTICLE THAT YOU READ.

10:58AM 16

A. YES.

10:58AM 17

Q. DO YOU RECALL QUESTIONS ABOUT THAT?

10:58AM 18

A. YES.

10:58AM 19

Q. AND IF WE COULD DISPLAY EXHIBIT 1944.

10:58AM 20

IF WE CAN GO TO PAGE 5 OF THE EXHIBIT, MS. WACHS.

10:58AM 21

DO YOU RECALL QUESTIONS FROM MR. COOPERSMITH ABOUT ASPECTS

10:58AM 22

OF THIS ARTICLE?

10:58AM 23

A. YES.

10:58AM 24

Q. OKAY. IF WE COULD PLEASE ENLARGE THE PARAGRAPH ON THE --

10:58AM 25

TOWARDS THE BOTTOM RIGHT IN THE COLUMN TO THE RIGHT WHERE IT

10:58AM 1 SAYS, "THE RESULTS OF THERANOS'S TESTS."

10:59AM 2 DO YOU SEE WHERE IT SAYS, "THE RESULTS OF THERANOS'S TESTS
10:59AM 3 ARE AVAILABLE WITHIN HOURS -- OFTEN MATCHING THE SPEED OF
10:59AM 4 EMERGENCY STAT LABS TODAY, THOUGH STAT LABS, WHICH ARE HIGHLY
10:59AM 5 INEFFICIENT, CAN USUALLY PERFORM ONLY IN A LIMITED MENU OF
10:59AM 6 MAYBE 40 TESTS."

10:59AM 7 DO YOU SEE THAT LANGUAGE?

10:59AM 8 A. YES.

10:59AM 9 Q. WAS THAT RELEVANT TO YOU?

10:59AM 10 A. YES.

10:59AM 11 Q. AND WAS THAT SOMETHING THAT YOU RELIED ON?

10:59AM 12 A. YES, AND THAT WAS CONSISTENT WITH WHAT WE WERE TOLD.

10:59AM 13 Q. OKAY. IF WE CAN PLEASE GO TO PAGE 7. AND IN THE COLUMN
10:59AM 14 TO THE RIGHT THERE'S A PARAGRAPH BEGINNING "IMPORTANTLY."

10:59AM 15 RIGHT IN THE MIDDLE.

10:59AM 16 DO YOU SEE WHERE IT SAYS, "IMPORTANTLY, IT'S NOT JUST THE
10:59AM 17 BLOOD DRAWS THAT ARE TINY. IT'S ALSO THE ANALYTICAL SYSTEMS
10:59AM 18 THERANOS USES TO PERFORM THE TESTS. THEY TAKE UP A SMALL
11:00AM 19 FRACTION OF THE FOOTPRINT REQUIRED BY A CONVENTIONAL LAB
11:00AM 20 TODAY."

11:00AM 21 DO YOU SEE THAT?

11:00AM 22 A. YES.

11:00AM 23 Q. AND WAS THAT RELEVANT TO YOU?

11:00AM 24 A. YES.

11:00AM 25 Q. WAS THAT CONSISTENT WITH WHAT MS. HOLMES AND MR. BALWANI

11:00AM 1 TOLD YOU?

11:00AM 2 A. YES.

11:00AM 3 Q. THANK YOU, MS. WACHS. YOU CAN TAKE THAT DOWN, PLEASE.

11:00AM 4 AND IF WE COULD PLEASE DISPLAY EXHIBIT 1853.

11:00AM 5 DO YOU RECALL BEING ASKED SOME QUESTIONS ABOUT THIS

11:00AM 6 PROJECTED STATEMENT OF INCOME?

11:00AM 7 A. YES.

11:00AM 8 Q. AND TO THE RIGHT YOU HAD WRITTEN "900 LOCATIONS."

11:00AM 9 DO YOU SEE THAT?

11:00AM 10 A. YES.

11:00AM 11 Q. AND I THINK YOU TESTIFIED THAT YOU UNDERSTOOD THAT IN

11:00AM 12 2015, THERANOS MIGHT NOT BE ABLE TO ACHIEVE EXACTLY 900

11:00AM 13 LOCATIONS?

11:00AM 14 A. CORRECT.

11:00AM 15 Q. OKAY. BUT YOU THOUGHT THAT THEY WOULD BE WITHIN THAT

11:00AM 16 BALLPARK?

11:00AM 17 A. YES, THAT'S WHAT THEY WERE INDICATING, YES.

11:00AM 18 Q. OKAY. AND I THINK ON DIRECT YOU TESTIFIED THAT YOU

11:01AM 19 BELIEVED, YOU KNOW, THERE WAS SOME DEVIATION FROM A PROJECTION

11:01AM 20 THAT YOU WERE PREPARED FOR; IS THAT CORRECT?

11:01AM 21 A. YES.

11:01AM 22 Q. EXPLAIN WHAT YOU MEAN BY THAT.

11:01AM 23 A. A PROJECTION IS A PROJECTION. WE UNDERSTAND THAT.

11:01AM 24 BUT I NEVER RECEIVED PROJECTIONS THAT THEY DON'T COME

11:01AM 25 CLOSE TO, AT LEAST MOVING IN THE RIGHT DIRECTION.

11:01AM 1 THE 12 -- THE THING THAT REALLY GETS US ON THIS ONE IS
11:01AM 2 THAT THE 12/31/14 REVENUE SAID 140 MILLION AND WE WERE A MONTH
11:01AM 3 AND A HALF FROM YEAR END --

11:01AM 4 Q. OKAY.

11:01AM 5 A. -- AND THEY WERE NOT EVEN CLOSE TO THAT.

11:01AM 6 SO, YES, WE UNDERSTAND 2015 WAS A PROJECTION, BUT THEY
11:01AM 7 KNEW THEY WEREN'T GOING TO GET NEAR THESE NUMBERS.

11:01AM 8 Q. DO YOU CONSIDER SOMETHING LESS THAN \$1 MILLION TO BE CLOSE
11:01AM 9 TO \$140 MILLION?

11:01AM 10 A. NO.

11:01AM 11 Q. DO YOU CONSIDER SOMETHING LESS THAN \$200 MILLION TO BE
11:02AM 12 CLOSE TO \$990 MILLION?

11:02AM 13 A. WITHIN ABOUT 10 PERCENT WOULD HAVE BEEN OKAY.

11:02AM 14 Q. YOU WERE ALSO ASKED SOME QUESTIONS ABOUT THIS BEING A
11:02AM 15 LONG-TERM INVESTMENT FOR RDV.

11:02AM 16 A. YES.

11:02AM 17 Q. DOES THAT MEAN REVENUE PROJECTIONS ARE IRRELEVANT TO YOU?

11:02AM 18 A. NOT THAT THEY'RE IRRELEVANT, NO.

11:02AM 19 BUT IT'S DIFFICULT TO PROJECT OUT THREE, FOUR, FIVE, TEN
11:02AM 20 YEARS FROM NOW.

11:02AM 21 BUT GIVEN EVERYTHING -- GIVEN THE VISION OF ELIZABETH AND
11:02AM 22 SUNNY, WE KNEW THAT THIS HAD THE POTENTIAL TO TRANSFORM HEALTH
11:02AM 23 CARE, WHICH IS -- WE RELIED, WE RELIED ON THE FACT THAT THEY
11:02AM 24 HAD DONE A LOT OF WORK IN THE PAST WITH PHARMACEUTICAL
11:02AM 25 COMPANIES TO GET THEM TO THIS POINT, AND THAT THEY HAD A LOT OF

11:02AM 1 GROWTH POTENTIAL FROM WHERE THEY WERE TODAY.

11:02AM 2 Q. OKAY.

11:02AM 3 A. AT THE TIME. SORRY.

11:03AM 4 Q. AND DID YOU RELY ON THE STATEMENTS THAT MS. HOLMES AND

11:03AM 5 MR. BALWANI MADE AT THE MEETING IN PALO ALTO IN OCTOBER?

11:03AM 6 A. YES.

11:03AM 7 Q. WERE THOSE RELEVANT TO THE INVESTMENT DECISIONS?

11:03AM 8 A. ABSOLUTELY.

11:03AM 9 Q. YOU WERE ALSO -- MR. COOPERSMITH WENT OVER WITH YOU, AS I

11:03AM 10 DID, SOME OF THE REPRESENTATIONS IN THE STOCK PURCHASE

11:03AM 11 AGREEMENT.

11:03AM 12 DO YOU RECALL THAT TESTIMONY?

11:03AM 13 A. YES.

11:03AM 14 Q. WHATEVER IS IN THE LEGAL DOCUMENT FORMALIZING THE

11:03AM 15 INVESTMENT, DID YOU NONETHELESS ACCEPT THE TRUTH OF WHAT

11:03AM 16 MS. HOLMES AND MR. BALWANI WERE SAYING TO YOU?

11:03AM 17 A. YES.

11:03AM 18 Q. AND DID YOU RELY ON THAT?

11:03AM 19 A. YES.

11:03AM 20 Q. MS. WACHS, IF WE COULD PLEASE DISPLAY EXHIBIT 2166.

11:03AM 21 DO YOU RECALL BEING ASKED QUESTIONS ABOUT THE APPROVAL

11:03AM 22 DOCUMENT THAT YOU PREPARED?

11:03AM 23 A. YES.

11:03AM 24 Q. OKAY. AND YOU WERE ASKED SOME QUESTIONS ABOUT YOU DON'T

11:03AM 25 KNOW WHO READ THIS?

11:03AM 1 A. CORRECT.

11:03AM 2 Q. OKAY. AND IF WE COULD PLEASE LOOK AT PAGE 7.

11:04AM 3 YOU RECOGNIZE THE SIGNATURES ON THIS DOCUMENT?

11:04AM 4 A. YES.

11:04AM 5 Q. THOSE ARE NOT YOUR SIGNATURES; RIGHT?

11:04AM 6 A. NO.

11:04AM 7 Q. THAT'S MR. TUBERGEN?

11:04AM 8 A. YES.

11:04AM 9 Q. AND MR. DAMSTRA?

11:04AM 10 A. YES.

11:04AM 11 Q. OKAY. AND IN THE INVESTMENT RISK, THERE'S A PORTION THAT

11:04AM 12 SAYS, "FURTHERMORE, UNLIKE MOST LABS, THERANOS DOES NOT BUY

11:04AM 13 ANALYZER EQUIPMENT FROM A THIRD PARTY AND THEY DO NOT SELL

11:04AM 14 THEIR ANALYZERS TO OTHER LABS."

11:04AM 15 DO YOU SEE THAT?

11:04AM 16 A. YES.

11:04AM 17 Q. IS THAT SOMETHING THAT MS. HOLMES AND MR. BALWANI TALKED

11:04AM 18 ABOUT IN YOUR MEETING IN CALIFORNIA?

11:04AM 19 A. YES.

11:04AM 20 Q. AND IS THAT SOMETHING THAT YOU RELIED ON?

11:04AM 21 A. YES.

11:04AM 22 MR. LEACH: MAY I HAVE A MOMENT, YOUR HONOR?

11:04AM 23 THE COURT: YES.

11:04AM 24 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

11:04AM 25 MR. LEACH: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

11:04AM 1 THANK YOU.

11:04AM 2 THANK YOU, MS. PETERSON.

11:04AM 3 THE COURT: MR. COOPERSMITH.

11:04AM 4 THE WITNESS: THANK YOU.

11:05AM 5 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:05AM 6 **RECROSS-EXAMINATION**

11:05AM 7 BY MR. COOPERSMITH

11:05AM 8 Q. MS. PETERSON, I THINK WE REALLY ARE IN THE HOME STRETCH
11:05AM 9 NOW.

11:05AM 10 SO WHAT I WANTED TO START WITH IS JUST MR. LEACH ASKED YOU
11:05AM 11 SOME QUESTIONS JUST NOW ABOUT WHAT YOU RELIED ON.

11:05AM 12 DO YOU RECALL THAT?

11:05AM 13 A. YES.

11:05AM 14 Q. AND, IN FACT, THE PEOPLE WHO ACTUALLY MAKE THE DECISION AT
11:05AM 15 RDV TO INVEST OR NOT ARE THE PEOPLE FROM THE DEVOS FAMILY ON
11:05AM 16 THE INVESTMENT COMMITTEE; RIGHT?

11:05AM 17 A. THAT'S CORRECT.

11:05AM 18 Q. OKAY. AND THEN MR. LEACH ASKED YOU SOME QUESTIONS ABOUT
11:05AM 19 THE OCTOBER 14TH, 2014, MEETING YOU ATTENDED WITH OTHERS AT
11:05AM 20 THERANOS?

11:05AM 21 A. YES.

11:05AM 22 Q. RIGHT?

11:05AM 23 AND DID MR. BALWANI OR MS. HOLMES TELL YOU THAT IN AUGUST
11:05AM 24 OF 2014 AN EXECUTIVE AT WALGREENS SENT THEM AN EMAIL SAYING
11:06AM 25 THAT WALGREENS WOULD TOUCH 2,000 STORES IN 2015?

11:06AM 1 A. NO, I DON'T RECALL THEM SAYING THERE WAS A MEMO.

11:06AM 2 Q. OKAY. YOU DON'T RECALL EITHER OF THEM SAYING THAT THERE

11:06AM 3 WAS AN EMAIL FROM A WALGREENS EXECUTIVE ABOUT TOUCHING 2,000

11:06AM 4 STORES IN 2015?

11:06AM 5 A. I DON'T RECALL THAT.

11:06AM 6 Q. OKAY. AND DID MR. BALWANI OR MS. HOLMES TELL YOU IN THE

11:06AM 7 OCTOBER 14TH MEETING THAT THERANOS, IN SEPTEMBER, HAD GIVEN

11:06AM 8 DIRECTION TO RAMP UP THEIR EMPLOYEE HIRING TO BE READY FOR A

11:06AM 9 LARGER ROLLOUT?

11:06AM 10 A. WHAT IS THE QUESTION? DID THEY TELL US THAT?

11:06AM 11 Q. DID THEY TELL YOU AT THE MEETING THAT THERANOS WAS

11:06AM 12 DIRECTING THEIR HR PERSONNEL TO ENGAGE IN HIRING RAMP UP IN

11:06AM 13 ORDER TO ACCOMPLISH THE ROLLOUT?

11:06AM 14 A. THEY DEFINITELY TOLD US THAT THEY WERE GETTING READY TO,

11:06AM 15 YES, ROLL IT OUT.

11:07AM 16 Q. AND DID THEY TELL YOU THAT THEY WERE HIRING A LOT MORE

11:07AM 17 PEOPLE TO DO THAT?

11:07AM 18 A. WELL, THAT ALL GOES BACK TO THE EXECUTION RISK AND MAKING

11:07AM 19 SURE THAT THEY HAD ENOUGH PEOPLE TO EXECUTE THE PLAN. SO, YES.

11:07AM 20 Q. SO YOU UNDERSTOOD THAT THEY WERE ENGAGING IN THAT HIRING

11:07AM 21 PRACTICE?

11:07AM 22 A. YES.

11:07AM 23 Q. RIGHT?

11:07AM 24 A. YES.

11:07AM 25 Q. IN ORDER TO DO THE ROLLOUT; RIGHT?

11:07AM 1 A. YES.

11:07AM 2 MR. COOPERSMITH: OKAY.

11:07AM 3 NOTHING FURTHER, YOUR HONOR.

11:07AM 4 MR. LEACH: NOTHING FURTHER, YOUR HONOR.

11:07AM 5 THE COURT: MAY THIS WITNESS BE EXCUSED?

11:07AM 6 MR. LEACH: NO, YOUR HONOR.

11:07AM 7 MR. COOPERSMITH: YES, YOUR HONOR.

11:07AM 8 THE COURT: MS. PETERSON, YOU'RE EXCUSED.

11:07AM 9 THE WITNESS: THANK YOU.

11:07AM 10 THE COURT: LADIES AND GENTLEMEN, WE'LL TAKE OUR

11:07AM 11 MORNING BREAK NOW, OUR MORNING BREAK OF 30 MINUTES, AND THEN

11:07AM 12 WE'LL COME BACK.

11:07AM 13 THE GOVERNMENT HAS ANOTHER WITNESS, I TAKE IT?

11:07AM 14 MR. SCHENK: YES.

11:07AM 15 THE COURT: ALL RIGHT. THANK YOU.

11:07AM 16 (RECESS FROM 11:07 A.M. UNTIL 11:37 A.M.)

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AFTERNOON SESSION

(JURY OUT AT 11:37 A.M.)

THE COURT: WELL, LET'S GO ON THE RECORD.

WE'RE OUTSIDE OF THE PRESENCE OF THE JURY. ALL COUNSEL
ARE PRESENT. MR. BALWANI IS PRESENT.

WE'RE GOING TO DISCUSS 1413, WHICH IS MR. BALWANI'S MOTION
TO EXCLUDE 3217.

AND MS. WALSH.

MS. WALSH: SURE. THANK YOU, YOUR HONOR.

SO THIS MOTION RELATES TO GOVERNMENT'S EXHIBIT 3217, WHICH
IS A ONE-PAGE EMAIL FROM HEATHER KING, WHO WAS IN-HOUSE COUNSEL
AT THERANOS, TO DR. DHAWAN, WHO IS ABOUT TO BE A WITNESS IN
THIS TRIAL. THE DATE IS JULY 9TH, 2016.

AND THE TEXT OF THE EMAIL IS "DR. DHAWAN, PLEASE SEE
ATTACHED AND LET ME KNOW IF YOU WANT TO DISCUSS."

THE ISSUE THAT WE HAVE WITH THIS EMAIL IS THE SUBJECT
LINE, BECAUSE THE SUBJECT LINE SAYS CMS NOTICE ON IMPOSITION OF
SANCTIONS.

AND OUR POSITION IS THAT THAT SUBJECT LINE IS DOUBLE
HEARSAY. WELL, THE EMAIL ITSELF IS DOUBLE HEARSAY BECAUSE OF
THE SUBJECT LINE.

THE FIRST LEVEL OF HEARSAY IS THAT IT'S AN EMAIL FROM
HEATHER KING WHO IS NOT A WITNESS AND AN OUT OF COURT WITNESS.

BUT BEYOND THAT, THE OTHER LAYER OF HEARSAY IS THAT IT'S A
FACTUAL ASSERTION THAT CMS HAS IMPOSED SANCTIONS ON THERANOS.

11:41AM 1 IT'S BEING OFFERED FOR THE TRUTH. IT DOES NOT FALL WITHIN
11:41AM 2 THE PUBLIC RECORDS EXCEPTION TO THE HEARSAY RULE.

11:41AM 3 YOUR HONOR TALKED ABOUT THIS A LITTLE IN THE HOLMES TRIAL,
11:41AM 4 AND I THINK THE DISTINCTION WAS MADE BETWEEN THE SANCTIONS
11:41AM 5 LETTER, WHICH HAS ALL KINDS OF CREDIBILITY DETERMINATIONS,
11:41AM 6 VERSUS THE CMS REPORT, WHICH THE COURT HELD CONTAINED
11:41AM 7 OBSERVATIONS OF A PUBLIC OFFICIAL UNDER A DUTY TO REPORT.

11:42AM 8 SO THE SANCTIONS LETTER AND ANY REFERENCE TO IT DO NOT
11:42AM 9 FALL INTO THE PUBLIC RECORD EXCEPTION TO THE HEARSAY RULE. WE
11:42AM 10 DON'T THINK IT FALLS INTO ANY EXCEPTION.

11:42AM 11 AND IN ADDITION TO THE DOUBLE HEARSAY PROBLEM, WE DON'T
11:42AM 12 THINK THAT IT'S PARTICULARLY RELEVANT, AND IT -- IN ANY EVENT,
11:42AM 13 THE PROBATIVE VALUE OF THE JURY KNOWING THAT CMS IMPOSED
11:42AM 14 SANCTIONS IS FAR OUTWEIGHED BY THE UNDUE PREJUDICIAL EFFECT OF
11:42AM 15 THAT.

11:42AM 16 THIS IS NOT A CASE ABOUT CMS SANCTIONS. IT'S ABOUT FRAUD.

11:42AM 17 AND TO THE EXTENT THAT CMS FINDINGS -- THE COURT HAS FOUND
11:42AM 18 CMS FINDINGS MIGHT COME INTO THE TRIAL, CERTAINLY THE SANCTIONS
11:42AM 19 THAT WERE ISSUED SHOULD NOT AND ARE NOT RELEVANT TO THE
11:42AM 20 CHARGES.

11:42AM 21 WHAT I HAVE PROPOSED TO THE GOVERNMENT THAT I THINK WOULD
11:42AM 22 SOLVE THE PROBLEM IS TO JUST REDACT THE SUBJECT LINE.

11:42AM 23 AND IF THE GOVERNMENT WANTS TO ASK DR. DHAWAN ABOUT THE
11:43AM 24 TIMING OF HIM GETTING ANY NOTIFICATION ABOUT THE CMS -- ANY
11:43AM 25 RESULTS FROM THE AUDIT, WE DON'T HAVE A PROBLEM WITH THAT.

11:43AM 1 IT'S JUST ELICITING THROUGH THIS WITNESS WHAT THOSE
11:43AM 2 RESULTS WERE.

11:43AM 3 THE COURT: OKAY. THANK YOU.

11:43AM 4 YOU KNOW, MR. SCHENK, I READ THIS AND THE FIRST THING I
11:43AM 5 THOUGHT WAS -- WELL, FIRST THING -- I THOUGHT, WELL, MAYBE JUST
11:43AM 6 REDACTING THE SUBJECT LINE AS MS. WALSH SAID.

11:43AM 7 BUT I'M HAPPY TO HEAR FROM YOU.

11:43AM 8 MR. SCHENK: YES. THANK YOU VERY MUCH, YOUR HONOR.
11:43AM 9 A FEW POINTS.

11:43AM 10 FIRST, I COULD LAY A BUSINESS RECORD FOUNDATION FOR THE
11:43AM 11 EMAIL. I'M SURE DR. DHAWAN WOULD SAY THAT HE RECEIVED EMAILS
11:43AM 12 LIKE THIS FROM FOLKS AT THERANOS THAT GAVE HIM INFORMATION THAT
11:43AM 13 HE NEEDED TO DO HIS JOB.

11:43AM 14 SO I THINK THAT CURES THE HEARSAY CONCERNS. IT IS A
11:43AM 15 BUSINESS RECORD.

11:43AM 16 SO NOW LET'S GET TO THE 403 ANALYSIS WHETHER THE WORD
11:43AM 17 "SANCTIONS" IS SO PREJUDICIAL THAT IT IS -- IT OUTWEIGHS ANY
11:44AM 18 PROBATIVE VALUE.

11:44AM 19 AND HERE'S WHY IT DOESN'T.

11:44AM 20 DR. DHAWAN STARTED WORK IN THERANOS IN NOVEMBER OF 2014.
11:44AM 21 DR. DHAWAN WAS PRESENT DURING THIS CMS INSPECTION ABOUT A YEAR
11:44AM 22 LATER IN SEPTEMBER OF '15, AND THIS DOCUMENT, WHICH IS NOW
11:44AM 23 AGAIN NOT QUITE A YEAR LATER, BUT JULY OF '16 IS THE FIRST TIME
11:44AM 24 THAT DHAWAN LEARNS THAT THINGS MIGHT NOT BE AS THEY SEEM IN THE
11:44AM 25 LAB.

11:44AM 1 EVERYTHING ELSE THAT HE'S HEARING IS GIVING HIM A ROSY
11:44AM 2 PICTURE. EVEN HIS PRESENCE DURING THE CMS INSPECTION, HOW IT
11:44AM 3 WAS JUST AN HOUR OR SO, BUT HE WAS PRESENT AND HE WAS UNAWARE
11:44AM 4 OF ANY CONCERNS THAT BALWANI OR HOLMES HAD ABOUT HOW THE
11:44AM 5 INSPECTION WAS GOING.

11:44AM 6 AFTER THE INSPECTION, THERE'S A TON OF DIALOGUE BETWEEN
11:45AM 7 THERANOS AND CMS ABOUT PROBLEMS, TRYING TO FIX THEM.

11:45AM 8 DHAWAN IS CUT OUT OF THE LOOP ON ALL OF THAT.

11:45AM 9 IT IS NECESSARY IN ORDER FOR THE JURY TO APPRECIATE THE
11:45AM 10 STORY THAT DHAWAN HAS VERSUS REALITY.

11:45AM 11 THE STORY THAT DHAWAN HAS IS EVERYTHING AFTER THE CMS
11:45AM 12 INSPECTION WAS FINE. HE DIDN'T KNOW THAT CMS HAD ANY CONCERNS.
11:45AM 13 HE CERTAINLY DIDN'T KNOW THAT IN JANUARY A DOCUMENT THAT THE
11:45AM 14 COURT RULED AT THE MOTIONS IN LIMINE STAGE CALLED THE 2567
11:45AM 15 COMES IN, HE HAD NO IDEA ABOUT THAT, AND THAT WAS SIX MONTHS
11:45AM 16 BEFORE THIS EMAIL.

11:45AM 17 AND IT IS, I THINK, PROBATIVE TO SHOW THAT THINGS WERE NOT
11:45AM 18 GOING WELL WITH CMS.

11:45AM 19 I DON'T -- I DON'T PLAN AND I'M NOT SEEKING TO OFFER THE
11:45AM 20 ACTUAL SANCTIONS, THE ATTACHMENT.

11:45AM 21 THE COURT: OKAY. THAT WAS MY NEXT QUESTION,
11:45AM 22 WHETHER THAT WAS GOING TO COME IN.

11:45AM 23 MR. SCHENK: NO. I'M NOT OFFERING PAGE 2 OR LATER
11:46AM 24 IN 3217. I JUST SEEK TO ADMIT THE EMAIL.

11:46AM 25 AND THE COURT CAN SEE THAT THE SUBJECT LINE OF THE EMAIL

11:46AM 1 IS TAKEN FROM THE REGARDING LINE OF THE LETTER. IT ISN'T AS
11:46AM 2 THOUGH HEATHER KING IS USING SOME OPINION OR ANALYSIS IN ORDER
11:46AM 3 TO CRAFT THAT SUBJECT LINE. SHE USES THE PHRASE "IMPOSITION OF
11:46AM 4 SANCTIONS," WHICH COMES FROM THE TITLE OF THE DOCUMENT.

11:46AM 5 DR. DHAWAN, AND FRANKLY, MR. BALWANI, ARE ON THE LETTER
11:46AM 6 THAT THEY RECEIVED, THE IMPOSITION OF SANCTIONS. IT IS
11:46AM 7 COMPLETELY APPROPRIATE TO ASK DR. DHAWAN IF THIS NOTICE, IF
11:46AM 8 THIS LETTER THAT HE WAS SENT FROM THERANOS IN JULY WAS THE
11:46AM 9 FIRST TIME HE EVER LEARNED THAT CMS HAD SOME CONCERNS, THAT THE
11:46AM 10 INSPECTION DID NOT GO WELL.

11:46AM 11 THE COURT: SO THANK YOU. THANK YOU.

11:46AM 12 DOES IT HAVE TO MENTION -- I THINK MS. WALSH'S CONCERN IS
11:46AM 13 THE PEJORATIVE TERM "SANCTIONS," AND DOES THE NOTICE HAVE TO
11:47AM 14 INCLUDE THAT?

11:47AM 15 WILL THERE BE EVIDENCE THROUGH DR. DHAWAN OR OTHERS THAT
11:47AM 16 THERE WERE SANCTIONS IMPOSED?

11:47AM 17 MR. SCHENK: SO I DID NOT INTEND TO EXPLORE THE
11:47AM 18 QUESTION OF SANCTIONS WITH DR. DHAWAN.

11:47AM 19 I DON'T INTEND TO ASK HIM WHETHER HE OR THERANOS WAS
11:47AM 20 PUNISHED OR ANY OF THOSE QUESTIONS.

11:47AM 21 BUT I DON'T THINK THAT THAT REQUIRES REDACTION OF THE
11:47AM 22 PHRASE BECAUSE THE EXTENT -- THE JURY IS ENTITLED TO UNDERSTAND
11:47AM 23 THAT THE EXTENT OF THE INFORMATION THAT WAS HIDDEN FROM HIM WAS
11:47AM 24 SIGNIFICANT, THAT IT WASN'T JUST CMS COMING IN AND HAVING A
11:47AM 25 CONCERN THAT SOME I'S WEREN'T DOTTED, SO TO SPEAK.

11:47AM 1 BUT THERE'S SIGNIFICANT DIALOGUE BETWEEN THERANOS AND CMS
11:47AM 2 THAT DR. DHAWAN AS LAB DIRECTOR IS ENTIRELY CUT OUT OF.

11:47AM 3 AND I THINK IT'S UNFAIR TO REDACT THE EMAIL IN A WAY THAT
11:47AM 4 DOESN'T GIVE THE JURY -- I APPRECIATE AND AGREE THAT THE WORD
11:48AM 5 "SANCTIONS" DOES HAVE SOME PUNCH. CMS CARED, AND THIS WAS
11:48AM 6 REALLY IMPORTANT, AND CMS HAD THIS ENTIRE DIALOGUE WITH
11:48AM 7 THERANOS AND THE LAB DIRECTOR DIDN'T KNOW ABOUT IT, AND I THINK
11:48AM 8 THAT IS WHAT MAKES IT PROBATIVE.

11:48AM 9 AND I DON'T INTEND TO ARGUE, AS MS. WALSH HAS EXPRESSED,
11:48AM 10 WHAT SHE WOULD CALL THE INAPPROPRIATE ASPECT OF IT, THAT THE
11:48AM 11 JURY SHOULD ALLOW CMS'S OPINION TO REPLACE THE JURY'S OPINION,
11:48AM 12 BECAUSE CMS FOUND SOME VIOLATIONS, THAT THE JURY SHOULD
11:48AM 13 CONVICT.

11:48AM 14 I DON'T INTEND TO ARGUE IT THAT WAY, BUT I DON'T THINK
11:48AM 15 THAT MEANS THAT THE PHRASE "SANCTIONS" MUST THEREFORE BE
11:48AM 16 REDACTED JUST BECAUSE THERE'S SOME ARGUMENT THAT COULD BE MADE
11:48AM 17 BASED UPON THAT PHRASE.

11:48AM 18 THE COURT: THANK YOU.

11:48AM 19 SO YOU'RE NOT GOING TO GET IN THE LETTER THAT FOLLOWS THIS
11:48AM 20 FROM THE INSPECTOR THAT OUTLINES ALL OF THE ISSUES, IT'S
11:48AM 21 MULTIPLE PAGES, BUT YOU WOULD LIKE TO ASK THE DOCTOR IF HE
11:49AM 22 RECEIVED THIS, AND THEN ASK HIM QUESTIONS ABOUT HIS KNOWLEDGE
11:49AM 23 OF THE OPERATIONS OF THE LAB BOTH AT A TIME PRECEDING HIM AND
11:49AM 24 DURING THE TIME THAT HE WAS LAB DIRECTOR?

11:49AM 25 MR. SCHENK: I INTEND TO ASK HIM WHETHER HIS VIEW OF

11:49AM 1 HOW THE CMS INSPECTION WENT CHANGED WHEN HE RECEIVED THIS. DID
11:49AM 2 HE HAVE ONE VIEW LEADING UP TO THE SEPTEMBER 2015 INSPECTION
11:49AM 3 AND FOLLOWING THE 2015 INSPECTION THROUGH JULY? AND THEN IN
11:49AM 4 JULY, DID HE THEN HAVE A DIFFERENT OPINION ABOUT HOW THE
11:49AM 5 INSPECTION WENT?

11:49AM 6 THE COURT: AND THAT'S RELEVANT BECAUSE?

11:49AM 7 MR. SCHENK: BECAUSE THE DEFENDANT HIRED DHAWAN AND
11:49AM 8 THEN KEPT HIM IN THE DARK, AND THAT'S RELEVANT INTENT.

11:49AM 9 THE COURT: AND THAT'S GOING -- YOU HAVE EVIDENCE OF
11:49AM 10 THAT. THIS IS PART OF IT, I PRESUME?

11:49AM 11 MR. SCHENK: CORRECT. YES, YOUR HONOR. IF DHAWAN
11:49AM 12 SAYS, YES, I LEARNED SOMETHING NEW FROM THIS, I THINK THAT'S ON
11:49AM 13 ALL FOUR'S WITH THE CONCEPT THAT HE WAS KEPT IN THE DARK.

11:50AM 14 THE COURT: MS. WALSH.

11:50AM 15 MS. WALSH: YES, YOUR HONOR.

11:50AM 16 THE COURT: PARDON ME FOR INTERRUPTING YOU. SO THE
11:50AM 17 LETTER IS NOT COMING IN, THAT GIVES YOU SOME RELIEF.

11:50AM 18 MS. WALSH: SOME. YES, SOME. I WOULD RATHER THAT
11:50AM 19 IT NOT COME IN.

11:50AM 20 THE COURT: RIGHT.

11:50AM 21 MS. WALSH: BUT I DO WANT TO ADDRESS THE EMAIL --

11:50AM 22 THE COURT: OF COURSE.

11:50AM 23 MS. WALSH: -- THAT IS BEING OFFERED.

11:50AM 24 THE GOVERNMENT SKIPPED OVER THE SECOND LEVEL OF HEARSAY,
11:50AM 25 WHICH IS CMS'S FACTUAL ASSERTION THAT WE ARE IMPOSING SANCTIONS

11:50AM 1 ON THERANOS. THAT'S A FACTUAL ASSERTION THAT IS IN THE LETTER,
11:50AM 2 AND THEN IS REPEATED BY ANOTHER PERSON, AN OUT-OF-COURT
11:50AM 3 DECLARANT, IN THE EMAIL. THERE ARE TWO LEVELS OF HEARSAY.

11:50AM 4 SO EVEN IF THE EMAIL COULD BE A BUSINESS RECORD, THE
11:50AM 5 CONTENT OF THAT SUBJECT LINE IS YET ANOTHER ASSERTION THAT'S
11:50AM 6 BEING REPEATED BY AN OUT-OF-COURT DECLARANT.

11:50AM 7 SO I THINK -- I DON'T THINK THE HEARSAY PROBLEM IS CURED
11:50AM 8 AT ALL. I THINK MAKING AN ASSERTION BY AN OUT-OF-COURT
11:51AM 9 DECLARANT THAT SOME OTHER DECLARANT HAS SAID WE'RE IMPOSING
11:51AM 10 SANCTIONS IS DOUBLE HEARSAY.

11:51AM 11 WE DON'T HAVE A WITNESS TO CROSS-EXAMINE TO ASK AND TEST
11:51AM 12 WHAT THE SANCTIONS WERE, WHY WERE THEY ISSUED?

11:51AM 13 IT'S JUST A BALD ASSERTION OFFERED FOR THE TRUTH WITH NO
11:51AM 14 CONTEXT AT ALL.

11:51AM 15 AND NOT THAT I WANT TO HAVE THE CONTEXT, BUT I DON'T THINK
11:51AM 16 IT IS APPROPRIATE THAT THIS SUBJECT LINE SHOULD KIND OF SNEAK
11:51AM 17 IN THE FACT THAT CMS ISSUED SANCTIONS AT THIS POINT IN TIME.

11:51AM 18 THE COURT: WILL THERE BE EVIDENCE OF SANCTIONS
11:51AM 19 AGAIN? I THINK I ASKED THAT.

11:51AM 20 MR. SCHENK: YOUR HONOR, THAT ARGUMENT IS A RED
11:51AM 21 HERRING.

11:51AM 22 DR. DHAWAN COULD SAY, I WAS SANCTIONED AND I'M HAPPY TO
11:51AM 23 EXPLAIN THAT TO YOU.

11:51AM 24 SO IF MS. WALSH HAS HER WISH, THERE'S A WITNESS ON THE
11:51AM 25 STAND SHE COULD CROSS WHETHER THIS IS AN UNSUPPORTED

11:51AM 1 OUT-OF-COURT STATEMENT. I'M OFFERING NOT TO GO THERE.

11:52AM 2 SO TO NOW SUGGEST THE GOVERNMENT'S CONCESSION THAT IT WILL
11:52AM 3 NOT EXPLORE THE SANCTIONS THAT DR. DHAWAN HIMSELF SUFFERED
11:52AM 4 SHOULDN'T BE USED AGAINST US TO NOW PROHIBIT THE ADMISSION OF
11:52AM 5 THAT PHRASE.

11:52AM 6 THE COURT: WELL, THAT WAS MY QUESTION.
11:52AM 7 YOU'RE NOT GOING TO INTRODUCE EVIDENCE OF THE SANCTIONS OR
11:52AM 8 ANYTHING LIKE THAT?

11:52AM 9 MR. SCHENK: I DO NOT INTEND, CORRECT, TO ASK
11:52AM 10 DR. DHAWAN ABOUT THE SUBSTANCE OF THE SANCTIONS.

11:52AM 11 THE COURT: THEN IS IT -- WHAT IS THE FAIRNESS OF
11:52AM 12 JUST HAVING THE WORD "SANCTIONS" OUT THERE WITH NO REFERENCE TO
11:52AM 13 IT? THEN IT'S JUST FLOATING OUT THERE, AND I COULD SEE HOW THE
11:52AM 14 JURY COULD NEGATIVELY SPECULATE ABOUT SANCTIONS.

11:52AM 15 AND IS THAT, IS THAT UNFAIR PREJUDICE?

11:52AM 16 MR. SCHENK: NO, YOUR HONOR.

11:52AM 17 I THINK THAT IS THE DICHOTOMY BETWEEN WHAT DR. DHAWAN
11:52AM 18 BELIEVED CMS'S VIEW OF THE INSPECTION WAS VERSUS REALITY.

11:52AM 19 AND TO SUGGEST OTHERWISE IS TO DENY THE JURY RELEVANT
11:53AM 20 INFORMATION.

11:53AM 21 WHAT THE COURT IS CONCERNED ABOUT IS ARGUMENTS MADE BASED
11:53AM 22 UPON THAT IMPLICATION, SUGGESTING THAT IF THERANOS GOT
11:53AM 23 SANCTIONED CIVILLY OR MR. BALWANI GOT SANCTIONED CIVILLY, THAT
11:53AM 24 THAT SHOULD REPLACE THE JUDGMENT OF THIS JURY.

11:53AM 25 AND THE GOVERNMENT'S ARGUMENTS IN CLOSING AND THE COURT'S

11:53AM 1 JURY INSTRUCTIONS PREVENT THAT UNFAIR PREJUDICE FROM OCCURRING.

11:53AM 2 BUT YOU DON'T ALSO THEN NEED TO REDACT BUSINESS RECORD
11:53AM 3 DOCUMENTS TO PREVENT THE JURY FROM KNOWING THAT WHAT MR. --
11:53AM 4 WHAT DR. DHAWAN BELIEVED TO BE THE CASE WAS VERY DIFFERENT FROM
11:53AM 5 WHAT WAS ACTUALLY THE CASE.

11:53AM 6 THE COURT: AND IS THE EMAIL NECESSARY? CAN YOU
11:53AM 7 JUST ASK HIM, DID YOU RECEIVE AN EMAIL FROM -- REGARDING CMS
11:53AM 8 AND NOTICE OF ACTION TAKEN, AND DID THINGS CHANGE AFTER THAT?

11:53AM 9 MR. SCHENK: I THINK THAT WOULD DEPEND ON
11:53AM 10 DR. DHAWAN'S MEMORY AND WHETHER THE EMAIL WOULD THEN NEED TO BE
11:54AM 11 REFRESHED, USED TO REFRESH HIS MEMORY.

11:54AM 12 THE COURT: RIGHT.

11:54AM 13 MR. SCHENK: I DON'T KNOW IF DR. DHAWAN WILL SAY "I
11:54AM 14 REMEMBER ON THIS DATE," OR EVEN ROUGHLY THIS DATE BEING
11:54AM 15 INFORMED OF IT.

11:54AM 16 THE COURT: SURE.

11:54AM 17 MR. SCHENK: BUT I HAVE A CONCERN THAT IF I DON'T
11:54AM 18 GROUND IT IN A DOCUMENT, WHAT HIS ANSWERS TO MY QUESTIONS WILL
11:54AM 19 BE IF I JUST ASK MORE GENERALLY.

11:54AM 20 IF I GROUND IT IN THE DOCUMENT AND I DON'T OFFER THE
11:54AM 21 ATTACHMENT, I THINK WE HAVE MORE OF A LEASH ON THE WAY THAT
11:54AM 22 CONVERSATION WILL GO THAN IF I JUST ASKED HIM, DID THERE COME A
11:54AM 23 POINT IN TIME WHEN YOU REALIZED THE INSPECTION DIDN'T GO AS YOU
11:54AM 24 THOUGHT?

11:54AM 25 THE COURT: RIGHT.

11:54AM 1 MR. SCHENK: IT'S MORE OPEN ENDED. I'M HAPPY TO DO
11:54AM 2 IT THAT WAY, BUT --

11:54AM 3 THE COURT: NO, I UNDERSTAND. AND THE POTENTIAL FOR
11:54AM 4 THAT IS WE DON'T KNOW.

11:54AM 5 MS. WALSH: WELL, YOUR HONOR, THE GOVERNMENT COULD
11:54AM 6 INSTRUCT ITS WITNESS TO NOT BLURT OUT ANYTHING ABOUT SANCTIONS
11:54AM 7 AND TO KEEP TO TIGHT QUESTIONING. I THINK THAT HAPPENS ALL THE
11:54AM 8 TIME.

11:54AM 9 SO I THINK IT'S POSSIBLE TO CIRCUMSCRIBE DR. DHAWAN'S
11:55AM 10 TESTIMONY JUST TO THE FACT THAT HE GOT NOTIFICATION FROM
11:55AM 11 MS. KING IN JULY AS TO SOME RESULTS FROM THE CMS AUDIT.

11:55AM 12 AND I DID WANT TO ADDRESS ANOTHER POINT THAT MR. SCHENK
11:55AM 13 RAISED, WHICH WAS THE RELEVANCE OF THIS BEING THAT MR. -- THAT
11:55AM 14 DR. DHAWAN WAS KEPT IN THE DARK ABOUT HOW THE CMS AUDIT WAS
11:55AM 15 GOING.

11:55AM 16 SO MR. DHAWAN WAS PRESENT ONLY FOR THE INTRODUCTION
11:55AM 17 PORTION OF THE CMS AUDIT AND THEN HE LEFT. HE WAS NOT THERE --
11:55AM 18 IT'S NOT LIKE HE WAS THERE LISTENING TO WHAT WAS GOING ON AND
11:55AM 19 THEN HE WAS KEPT IN THE DARK ABOUT THE RESULTS OF THE BACK AND
11:55AM 20 FORTH THAT HAD OCCURRED WITHOUT IN FRONT OF HIM. HE WAS THERE
11:55AM 21 FOR THE INTRODUCTION AND THEN HE LEFT.

11:55AM 22 TO THE EXTENT THE GOVERNMENT WANTS TO PROVE GENERALLY THAT
11:55AM 23 DR. DHAWAN WAS KEPT IN THE DARK ABOUT THE LAB, WHICH IS I THINK
11:56AM 24 THE GREATER POINT THAT THEY WOULD WANT TO PROVE, THAT'S WHAT
11:56AM 25 THIS -- I MEAN, TO SOME EXTENT, THE WHOLE TRIAL IS ABOUT THAT.

1 I DON'T SEE WHY WE HAVE TO GO TO CMS SANCTIONS TO PROVE
2 THAT DR. DHAWAN WAS KEPT IN THE DARK ABOUT WHAT WAS GOING ON IN
3 THE LAB.

4 IT'S GOING TO BE VERY CLEAR FROM THE TESTIMONY THAT HE WAS
5 A PART-TIME LAB DIRECTOR, THAT HE DIDN'T VISIT THE LAB VERY
6 OFTEN, THAT HE HAD VERY FEW EMAILS ABOUT THE LAB.

7 ALL OF THAT PAINTS THE PICTURE THAT I THINK THE GOVERNMENT
8 WANTS TO, WHICH IS HE WAS NOT IN CLOSE CONTACT WITH THE LAB.

9 THERE'S NO, THERE'S NO ADDED RELEVANCE OR PROBATIVE VALUE
10 TO GETTING IN THIS EMAIL ABOUT SANCTIONS, AND IT ADDS ENORMOUS
11 PREJUDICE BECAUSE THE JURY IS GOING TO SAY, OH, WELL, IF THE
12 LAB WAS SANCTIONED, THEN MR. BALWANI IS GUILTY.

13 THE COURT: MR. SCHENK.

14 MR. SCHENK: YOUR HONOR, I APPRECIATE MS. WALSH
15 THINKS WE HAVE SUFFICIENT EVIDENCE IN ONE BUCKET, WHICH IS
16 DHAWAN IN THE DARK ABOUT THE DAY-TO-DAY RUNNING OF THE LAB.

17 BUT I DON'T THINK THAT THAT MEANS THAT THE GOVERNMENT
18 SHOULD BE PROHIBITED FROM EXPLORING ANOTHER AREA IN WHICH HE
19 WAS KEPT IN THE DARK, ESPECIALLY WHEN IT GOES RIGHT TO
20 MR. BALWANI'S FEET, AND THAT IS THE INTERACTIONS WITH THE
21 REGULATOR.

22 MR. BALWANI ASKS DR. DHAWAN TO COME TO THE CMS INSPECTION.

23 AFTER THE CMS INSPECTION DOESN'T GO WELL, MR. BALWANI
24 DOESN'T SHARE ANY OF THAT INFORMATION WITH DR. DHAWAN.

25 SO IT IS RELEVANT EVIDENCE THAT THIS JURY SHOULD HEAR WHEN

11:57AM 1 THE JURY INSTRUCTIONS ASK THEM TO REACH CONCLUSIONS ABOUT
11:57AM 2 MR. BALWANI'S INTENT, AND TO SORT OF FALSELY LIMIT THE
11:57AM 3 GOVERNMENT TO EXPLORING JUST DR. DHAWAN'S UNDERSTANDING OR
11:57AM 4 INVOLVEMENT IN THE DAY-TO-DAY OPERATION OF THE LAB IS UNFAIR.

11:57AM 5 WE SHOULD ALSO GET TO PROVE TO THE JURY THAT HE WAS KEPT
11:57AM 6 IN THE DARK ABOUT THE REGULATOR'S INTERACTIONS WITH THE LAB.

11:57AM 7 THE COURT: WELL, I THINK YOU PROBABLY PART COMPANY
11:58AM 8 WITH THAT EVIDENCE COMING IN, OR THE TYPE OF IT, MS. WALSH, BUT
11:58AM 9 THE GOVERNMENT CAN PUT THEIR CASE ON TO ALLEGE WHAT THEY
11:58AM 10 BELIEVE HAS HAPPENED, AND THE JURY WILL DECIDE WHETHER OR NOT
11:58AM 11 MR. BALWANI HAS ACTED TO KEEP DR. DHAWAN IN THE DARK OR NOT,
11:58AM 12 WHATEVER THE EVIDENCE SHOWS.

11:58AM 13 BUT, YOU KNOW, FROM THAT ASPECT, THEY'RE PERMITTED TO PUT
11:58AM 14 SOMETHING ON IN THAT REGARD.

11:58AM 15 MS. WALSH: SURE, YOUR HONOR. I DON'T DISPUTE THAT
11:58AM 16 AT ALL.

11:58AM 17 BUT THEY HAVE TO DO THAT WITHIN THE RULES OF EVIDENCE, AND
11:58AM 18 SO IF THE ISSUE IS MR. BALWANI KEPT DR. DHAWAN IN THE DARK
11:58AM 19 ABOUT THE FACT THAT THE CMS AUDIT WAS GOING BADLY, THEY CAN ASK
11:58AM 20 DR. DHAWAN, DID MR. BALWANI EVER TELL YOU HOW THE CMS AUDIT
11:58AM 21 WENT?

11:58AM 22 AND HE'LL SAY, NO, HE NEVER TOLD ME.

11:58AM 23 THE COURT: WELL, I THINK THE POINT WE HEARD IS THAT
11:58AM 24 THE GOVERNMENT WOULD THEN SEEK TO SAY, YOU RECEIVED SOMETHING,
11:58AM 25 EITHER THIS DOCUMENT, IF IT COMES IN, OR YOU RECEIVED NOTICE

11:58AM 1 THAT CMS HAD TAKEN SOME ACTION OR HAD SOME OPINION THAT WAS
11:59AM 2 NEGATIVE TOWARDS THE LABORATORY?

11:59AM 3 THAT'S SOMETHING THAT -- AND THEN FROM THAT THE QUESTION
11:59AM 4 WOULD BE, AS MR. SCHENK SAID, IS THAT THE FIRST TIME THAT YOU
11:59AM 5 HEARD THERE WERE PROBLEMS IN THE LAB? WHICH SUGGESTS THERE WAS
11:59AM 6 A VACUUM THAT HE WAS KEPT FROM.

11:59AM 7 MS. WALSH: RIGHT. I JUST -- I GUESS THE REALLY
11:59AM 8 PREJUDICIAL PORTION IS THE SANCTIONS PORTION.

11:59AM 9 THE COURT: RIGHT.

11:59AM 10 MS. WALSH: AND THE SANCTIONS -- AS THE COURT
11:59AM 11 COMMENTED IN THE PRIOR TRIAL, THE SANCTIONS ARE SEPARATE AND
11:59AM 12 APART FROM THE CMS FINDINGS, AND REALLY THE SANCTIONS SHOULD
11:59AM 13 NOT COME INTO THIS TRIAL AT ALL.

11:59AM 14 AND IT CERTAINLY SHOULDN'T COME IN THROUGH A ONE-LINE
11:59AM 15 SUBJECT LINE ON AN EMAIL FROM AN OUT-OF-COURT DECLARANT.

11:59AM 16 THE COURT: WHAT I'D LIKE -- THANK YOU.

11:59AM 17 ANYTHING FURTHER, MR. SCHENK?

11:59AM 18 MR. SCHENK: NO, YOUR HONOR.

11:59AM 19 THE COURT: WHAT I'D LIKE TO DO, MR. SCHENK, IS HAVE
11:59AM 20 YOU EXAMINE THE WITNESS AS WE DISCUSSED, I DISCUSSED, ASK HIM,
12:00PM 21 WITHOUT INTRODUCING THE DOCUMENT, BUT ASK HIM THAT QUESTION
12:00PM 22 ABOUT KNOWLEDGE OF WAS THE LAB DIFFERENT, HOWEVER YOU SAID YOU
12:00PM 23 WERE GOING TO PHRASE IT, AND WE'LL SEE WHAT HAPPENS. IF YOU
12:00PM 24 NEED TO REFRESH HIS RECOLLECTION, WE'LL SEE.

12:00PM 25 IF HE SAYS SOMETHING ELSE, WE'LL BE ON PINS AND NEEDLES

12:00PM 1 AND SEE, AND SEE HOW THAT IS.

12:00PM 2 OKAY. THANKS VERY MUCH. LET'S BRING OUR JURY OUT.

12:00PM 3 I'M THINKING WE'RE GOING TO GO UNTIL 4:00 TODAY. I'M

12:00PM 4 HOPING WE'LL GO UNTIL 4:00 TODAY.

12:00PM 5 ARE WE ANTICIPATING THIS WITNESS WILL OCCUPY JUST THE REST

12:00PM 6 OF TODAY?

12:00PM 7 MR. SCHENK: YES, YOUR HONOR.

12:00PM 8 THE COURT: IS THAT JUST THE GOVERNMENT'S

12:00PM 9 EXAMINATION?

12:00PM 10 MR. SCHENK: I HOPE THAT, ALTHOUGH MS. WALSH WILL

12:00PM 11 HAVE BETTER INFORMATION THAN ME, I HOPE WE CAN FINISH WITH

12:00PM 12 DR. DHAWAN IF WE HAVE THAT MUCH TIME LEFT IN THE DAY.

12:00PM 13 THE COURT: OKAY. TERRIFIC. THANK YOU.

12:00PM 14 MS. WALSH: THANK YOU.

12:01PM 15 (RECESS FROM 12:01 P.M. UNTIL 12:04 P.M.)

12:04PM 16 (JURY IN AT 12:04 P.M.)

12:04PM 17 THE COURT: WE ARE BACK ON THE RECORD. THE JURY IS

12:08PM 18 PRESENT. MR. BALWANI IS PRESENT.

12:08PM 19 DOES THE GOVERNMENT HAVE A WITNESS TO CALL?

12:08PM 20 MR. SCHENK: YES, WE DO, YOUR HONOR.

12:08PM 21 THE GOVERNMENT CALLS SUNIL DHAWAN.

12:08PM 22 THE COURT: THANK YOU.

12:08PM 23 SIR, IF YOU WOULD JUST STEP OVER HERE AND FACE OUR

12:08PM 24 COURTROOM DEPUTY WHILE YOU RAISE YOUR RIGHT HAND, SHE HAS A

12:08PM 25 QUESTION FOR YOU.

12:08PM 1 THE CLERK: SIR.

12:08PM 2 THE WITNESS: SORRY.

12:08PM 3 **(GOVERNMENT'S WITNESS, SUNIL DHAWAN, WAS SWORN.)**

12:08PM 4 THE WITNESS: YES.

12:09PM 5 THE CLERK: ALL RIGHT. THANK YOU.

12:09PM 6 THE COURT: PLEASE HAVE A SEAT HERE, SIR. MAKE

12:09PM 7 YOURSELF COMFORTABLE.

12:09PM 8 FEEL FREE TO ADJUST THE CHAIR AND MICROPHONE AS YOU NEED.

12:09PM 9 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

12:09PM 10 AND THEN SPELL IT, PLEASE.

12:09PM 11 THE WITNESS: MAY I REMOVE MY MASK, JUDGE?

12:09PM 12 THE COURT: YOU'RE FULLY VACCINATED?

12:09PM 13 THE WITNESS: YES.

12:09PM 14 THE COURT: YES.

12:09PM 15 THE WITNESS: SUNIL S. DHAWAN.

12:09PM 16 THE COURT: AND SPELL IT, PLEASE.

12:09PM 17 THE WITNESS: S-U-N-I-L, S, D-H-A-W-A-N.

12:09PM 18 THE COURT: THANK YOU.

12:09PM 19 COUNSEL.

12:09PM 20 MR. SCHENK: THANK YOU, YOUR HONOR.

12:09PM 21 **DIRECT EXAMINATION**

12:09PM 22 BY MR. SCHENK:

12:09PM 23 Q. GOOD AFTERNOON, DR. DHAWAN. HOW ARE YOU?

12:09PM 24 A. GOOD, THANK YOU.

12:09PM 25 Q. DR. DHAWAN, DO YOU KNOW SOMEONE NAMED SUNNY BALWANI?

12:09PM 1 A. YES.

12:09PM 2 Q. HOW DID YOU MEET HIM?

12:09PM 3 A. MANY YEARS AGO AS A PATIENT.

12:09PM 4 Q. AS A PATIENT OF YOURS?

12:09PM 5 A. YES.

12:09PM 6 Q. ARE YOU A MEDICAL DOCTOR?

12:09PM 7 A. YES, SIR.

12:09PM 8 Q. AND DESCRIBE FOR THE JURY, PLEASE, YOUR MEDICAL TRAINING.

12:09PM 9 A. I DID MY MEDICAL SCHOOL AND THEN INTERNAL MEDICINE

12:10PM 10 RESIDENCY, AND THEN I DID A DERMATOLOGY RESIDENCY AFTERWARDS.

12:10PM 11 Q. AND DO YOU PRACTICE MEDICINE NOW?

12:10PM 12 A. YES, I DO.

12:10PM 13 Q. WHERE?

12:10PM 14 A. IN FREMONT AND MILPITAS.

12:10PM 15 Q. AND WHAT IS THE NAME OF YOUR PRACTICE?

12:10PM 16 A. CENTER FOR DERMATOLOGY.

12:10PM 17 Q. AND WHEN DID YOU MEET MR. BALWANI? DO YOU KNOW THE YEAR?

12:10PM 18 A. IT WOULD HAVE BEEN AT LEAST 15 -- PROBABLY EARLY 2000'S.

12:10PM 19 Q. WERE YOU AT THAT TIME WORKING AT THE SAME DERMATOLOGY

12:10PM 20 CENTER?

12:10PM 21 A. YES.

12:10PM 22 Q. AND WHAT DO YOU DO THERE?

12:10PM 23 A. I AM ONE OF THE PARTNERS THERE. I MANAGE PATIENTS, AND

12:10PM 24 HAVE A CLINICAL RESEARCH OFFICE AS WELL THAT WE RUN.

12:10PM 25 Q. ARE THOSE TWO SEPARATE THINGS, YOUR PATIENTS AND YOUR

12:10PM 1 CLINICAL RESEARCH?

12:10PM 2 A. THEY ARE SEPARATE, BUT THEY'RE INTERMINGLED. THEY WORK

12:10PM 3 TOGETHER.

12:10PM 4 Q. WOULD YOU JUST SPEND A MOMENT DESCRIBING FOR THE JURY THE

12:10PM 5 CLINICAL RESEARCH WORK THAT YOU DO?

12:10PM 6 A. SO I WORK FOR BIOTECH PHARMACEUTICAL DEVICE MANUFACTURERS

12:10PM 7 IN PART OF THE APPROVAL PROCESS IN FRONT OF THE FOOD AND DRUG

12:11PM 8 ADMINISTRATION TO GET THEIR PRODUCT APPROVED, AND WE DO TRIALS

12:11PM 9 ON PATIENTS ON A ROUTINE BASIS.

12:11PM 10 Q. AND IF WE CAN THINK OF THEM AS TWO SIDES OF YOUR WORK,

12:11PM 11 WHICH ONE WAS THE ONE WHERE YOU HAD THE OPPORTUNITY TO MEET

12:11PM 12 MR. BALWANI?

12:11PM 13 A. IN THE REGULAR PRACTICE.

12:11PM 14 Q. AS A PATIENT IN YOUR REGULAR PRACTICE?

12:11PM 15 A. YES.

12:11PM 16 Q. THROUGH YOUR DISCUSSIONS WITH MR. BALWANI, DID HE EVER

12:11PM 17 TELL YOU WHERE HE WORKED?

12:11PM 18 A. INITIALLY MANY YEARS AGO, YES. I DON'T RECALL WHERE THOSE

12:11PM 19 PLACES WERE.

12:11PM 20 Q. OKAY. WAS THERE A POINT IN TIME WHEN HE DESCRIBED TO YOU

12:11PM 21 A COMPANY CALLED THERANOS?

12:11PM 22 A. HE DID.

12:11PM 23 Q. AND DO YOU REMEMBER WHEN THAT WAS?

12:11PM 24 A. I BELIEVE IT WAS 2014, PERHAPS 2013.

12:11PM 25 Q. OKAY. DID HE ASK YOU TO WORK AT THERANOS?

12:11PM 1 A. INITIALLY, NO.

12:11PM 2 BUT I BELIEVE AT THE END OF 2014 HE ASKED ME TO DO SOME

12:12PM 3 WORK FOR THEM.

12:12PM 4 Q. WHAT TYPE OF WORK WAS HE INTERESTED IN HAVING YOU DO FOR

12:12PM 5 THERANOS?

12:12PM 6 A. MEDICAL DIRECTOR FOR A SHORT PERIOD OF TIME.

12:12PM 7 Q. MEDICAL DIRECTOR?

12:12PM 8 A. OR DIRECTOR OF THE LAB ACTUALLY.

12:12PM 9 Q. LAB DIRECTOR?

12:12PM 10 A. YES, SIR.

12:12PM 11 Q. OKAY. DID YOU EVENTUALLY SAY YES? DID YOU ACCEPT THAT

12:12PM 12 JOB?

12:12PM 13 A. YES.

12:12PM 14 Q. WE'LL LOOK AT SOME DOCUMENTS IN A MOMENT, BUT FOR HOW LONG

12:12PM 15 WERE YOU LAB DIRECTOR? DO YOU RECALL?

12:12PM 16 A. IT VARIED.

12:12PM 17 MY INITIAL IMPRESSION WAS THAT IT WAS ONLY GOING TO BE FOR

12:12PM 18 A FEW MONTHS, LIKE TWO OR THREE MONTHS, AND THEN IT ENDED UP

12:12PM 19 STRETCHING OUT TO I BELIEVE CLOSE TO EIGHT, NINE MONTHS.

12:12PM 20 Q. OKAY. WE'LL LOOK AT THAT ALSO.

12:12PM 21 LET'S START WHEN YOU BEGAN YOUR TIME AS LAB DIRECTOR.

12:12PM 22 A. UH-HUH.

12:12PM 23 Q. DO YOU KNOW THAT DATE, OR WOULD IT HELP IF I SHOWED YOU

12:12PM 24 SOME DOCUMENTS?

12:12PM 25 A. IT WOULD BE IN THE DOCUMENTS, CORRECT.

12:12PM 1 MR. SCHENK: YOUR HONOR, MAY I APPROACH?

12:12PM 2 THE COURT: PLEASE.

12:13PM 3 MR. SCHENK: THANK YOU. (HANDING.)

12:13PM 4 Q. DR. DHAWAN, I'VE HANDED YOU A BINDER OF DOCUMENTS, AND I'M
12:13PM 5 GOING TO ASK YOU TO START BY TURNING TO THE TAB MARKED 2537.

12:13PM 6 YOUR HONOR, I BELIEVE I CAN OFFER THIS BY STIPULATION OF
12:13PM 7 THE PARTIES.

12:13PM 8 THE COURT: MS. WALSH?

12:13PM 9 MS. WALSH: YES, YOUR HONOR.

12:13PM 10 THERE IS ONE SMALL REDACTION THAT I REQUESTED. MR. SCHENK
12:13PM 11 MAY KNOW WHAT I'M TALKING ABOUT.

12:13PM 12 MR. SCHENK: YES. I DO NOT INTEND TO --

12:13PM 13 MS. WALSH: ALL RIGHT. THANK YOU.

12:13PM 14 NO OBJECTION, YOUR HONOR.

12:13PM 15 THE COURT: THIS IS ADMITTED. IT MAY BE PUBLISHED.

12:13PM 16 (GOVERNMENT'S EXHIBIT 2537 WAS RECEIVED IN EVIDENCE.)

12:13PM 17 BY MR. SCHENK:

12:13PM 18 Q. DR. DHAWAN, IT WILL APPEAR ON THE SCREEN, AND IT WILL BE
12:13PM 19 IN THE BINDER, SO TAKE YOUR PICK.

12:13PM 20 IF WE CAN START ON PAGE 6 OF THIS DOCUMENT.

12:14PM 21 SORT OF IN THE MIDDLE OF THE PAGE, DO YOU SEE AN EMAIL --
12:14PM 22 ACTUALLY MORE TOWARDS THE BOTTOM, THERE IS SOMETHING THAT SAYS,
12:14PM 23 ON FRIDAY, NOVEMBER 14, 2014.

12:14PM 24 DO YOU SEE THAT?

12:14PM 25 A. YES.

12:14PM 1 Q. AND IS THAT AN EMAIL FROM MR. BALWANI TO YOU?

12:14PM 2 A. YES.

12:14PM 3 Q. IN THAT FIRST PARAGRAPH, MR. BALWANI THANKS YOU FOR TAKING
12:14PM 4 HIS CALL.

12:14PM 5 AND HE THEN GOES ON TO SAY, "THE TIME COMMITMENT IS VERY
12:14PM 6 MINIMAL. THIS WILL BE MOSTLY AN ON CALL CONSULTING ROLE AND I
12:14PM 7 AM EXTREMELY CONFIDENT THAT IT WON'T INTERFERE WITH YOUR WORK
12:14PM 8 OR WITH YOUR FAMILY LIFE."

12:14PM 9 AND THEN TOWARDS THE BOTTOM OF THE SCREEN WE SEE, "THIS
12:14PM 10 WILL BE 1-3 MONTHS," AND THEN IT CONTINUES ON THE NEXT PAGE,
12:14PM 11 "ROLE."

12:14PM 12 DO YOU SEE THAT?

12:14PM 13 A. YES.

12:14PM 14 Q. AND WAS THIS THE BEGINNING OF A CONVERSATION BETWEEN YOU
12:14PM 15 AND MR. BALWANI ABOUT YOU BECOMING A LAB DIRECTOR AT THERANOS?

12:14PM 16 A. YES.

12:14PM 17 Q. AND IS THAT CONSISTENT WITH YOUR MEMORY THAT IT WAS AROUND
12:15PM 18 NOVEMBER OF 2014?

12:15PM 19 A. YES.

12:15PM 20 Q. DO YOU KNOW WHETHER THERANOS HAD A LAB DIRECTOR BEFORE YOU
12:15PM 21 OR WHETHER YOU WERE GOING TO BE THE FIRST LAB DIRECTOR IN
12:15PM 22 NOVEMBER OF 2014?

12:15PM 23 A. MY RECOLLECTION IS THAT THERE WAS SOMEBODY BEFORE ME.

12:15PM 24 Q. DID MR. BALWANI DESCRIBE TO YOU THE CIRCUMSTANCES OF THAT
12:15PM 25 INDIVIDUAL'S DEPARTURE?

12:15PM 1 A. NO.

12:15PM 2 Q. YOU HAD NO KNOWLEDGE OF WHY THAT PERSON LEFT; IS THAT

12:15PM 3 RIGHT?

12:15PM 4 A. NO.

12:15PM 5 Q. IF YOU'LL NOW GO UP ONE EMAIL ON PAGE 6, YOU RESPOND, IT

12:15PM 6 LOOKS LIKE, "SUNNY,

12:15PM 7 "I CAN DO THIS -- WHAT IS NEXT STEP?"

12:15PM 8 DO YOU SEE THAT?

12:15PM 9 A. YES.

12:15PM 10 Q. AND SO IS THIS THE BEGINNING OF YOU ACCEPTING THE JOB AS

12:15PM 11 LAB DIRECTOR?

12:15PM 12 A. YES.

12:15PM 13 Q. I'M GOING TO NOW ASK YOU TO TURN TO TAB 2248.

12:15PM 14 AND I BELIEVE THIS IS ALSO OFFERED BY STIPULATION,

12:15PM 15 YOUR HONOR.

12:15PM 16 MS. WALSH: YES. NO OBJECTION.

12:16PM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:16PM 18 2248?

12:16PM 19 MR. SCHENK: YES, YOUR HONOR, 2248.

12:16PM 20 (GOVERNMENT'S EXHIBIT 2248 WAS RECEIVED IN EVIDENCE.)

12:16PM 21 BY MR. SCHENK:

12:16PM 22 Q. DR. DHAWAN, IS THIS AN EMAIL FROM AN INDIVIDUAL AT

12:16PM 23 THERANOS TO YOU, NOW ATTACHING AN EMPLOYMENT AGREEMENT, OR WHAT

12:16PM 24 IS CALLED A CONSULTING AGREEMENT?

12:16PM 25 A. YES.

12:16PM 1 Q. AND IS THIS A FEW WEEKS LATER NOW TOWARDS THE END OF
12:16PM 2 NOVEMBER 2014?

12:16PM 3 A. YES.

12:16PM 4 Q. WOULD YOU TURN TO PAGE 2 OF THIS EXHIBIT?

12:16PM 5 ACTUALLY, THAT'S FINE. PAGE 2 AT THE VERY TOP, DO YOU SEE
12:16PM 6 IT'S ENTERED INTO AND THERE'S A DATE.

12:16PM 7 THE DATE IS NOVEMBER 19TH, 2014?

12:16PM 8 A. YES.

12:16PM 9 Q. SO IS THAT THE DATE THAT YOU BEGAN AS THERANOS LAB
12:16PM 10 DIRECTOR?

12:16PM 11 A. YES.

12:16PM 12 Q. WOULD YOU NOW TURN TO PAGE 7 OF THIS EXHIBIT.

12:16PM 13 DOES THIS EXHIBIT A LAY OUT YOUR COMPENSATION AND THE
12:17PM 14 SERVICES THAT YOU WOULD PERFORM?

12:17PM 15 A. YES.

12:17PM 16 Q. FIRST, WHO WAS YOUR CONTACT AT THERANOS?

12:17PM 17 A. IT WOULD HAVE BEEN SUNNY, MR. BALWANI.

12:17PM 18 Q. OKAY. AND HERE IT SAYS, "SUNNY BALWANI, PRESIDENT AND
12:17PM 19 COO."

12:17PM 20 TELL ME NOW IF IN REALITY THAT WAS TRUE. I SEE THE
12:17PM 21 DOCUMENT SAYS THAT YOUR PRINCIPAL CONTACT WAS MR. BALWANI, BUT
12:17PM 22 HOW ABOUT IN PRACTICE? ONCE YOU STARTED THERE, WAS MR. BALWANI
12:17PM 23 YOUR PRIMARY CONTACT IN FACT?

12:17PM 24 A. IN FACT, YES.

12:17PM 25 Q. THE NEXT -- NUMBER 2 TALKS ABOUT SERVICES.

12:17PM 1 DOES IT SAY YOU WILL BE SERVING AS A LAB DIRECTOR AND
12:17PM 2 CLINICAL CONSULTANT OF THERANOS'S CLIA LAB?
12:17PM 3 A. YES.
12:17PM 4 Q. IN YOUR PRACTICE THAT YOU DESCRIBED TO US A MOMENT AGO,
12:17PM 5 YOUR DERMATOLOGY PRACTICE, DID YOU HAVE PRIOR EXPERIENCE BEING
12:17PM 6 A LAB DIRECTOR?
12:17PM 7 A. YES, IN MY OWN PRACTICE.
12:18PM 8 Q. WERE THERE DIFFERENCES BETWEEN THE THERANOS LAB AND YOUR
12:18PM 9 LAB?
12:18PM 10 A. YES. WE DID MORE HISTOPATHOLOGIC EXAMINATIONS,
12:18PM 11 H-I-S-T-O-P-A-T-H-O-L-O-G-I-C, EXAMINATIONS OF SLIDES.
12:18PM 12 Q. I'M SORRY. IN WHICH ONE?
12:18PM 13 A. IN MY OWN -- IN OUR PRACTICE.
12:18PM 14 Q. OKAY. SO IN YOUR PRACTICE, THE LAB WORK INVOLVED PUTTING
12:18PM 15 A SUBSTANCE ON A SLIDE AND LOOKING AT IT?
12:18PM 16 A. PROCESS SLIDES ACTUALLY.
12:18PM 17 Q. AND HOW IS THAT DIFFERENT FROM WHAT YOU UNDERSTOOD THE
12:18PM 18 WORK AT THERANOS TO BE?
12:18PM 19 A. IT WOULD BE MORE LABORATORY VALUES, LABORATORY
12:18PM 20 EXAMINATIONS OF BLOOD SAMPLES, ET CETERA.
12:18PM 21 Q. IN NOVEMBER OF 2014 WHEN YOU AGREED TO TAKE ON THIS ROLE
12:18PM 22 AT THERANOS, WHAT DID YOU UNDERSTAND THERANOS TO DO?
12:18PM 23 A. USING A DEVICE TO ANALYZE BLOOD SPECIMENS.
12:19PM 24 Q. AND WHERE DID YOU GET THAT UNDERSTANDING?
12:19PM 25 A. MOSTLY FROM MY RESEARCH ON -- ON THE INTERNET AND ON

12:19PM 1 GOOGLE.

12:19PM 2 Q. MR. BALWANI ASKED YOU TO BE LAB DIRECTOR AT THERANOS, AND

12:19PM 3 THEN YOU LEARNED ABOUT THERANOS THROUGH GOOGLE?

12:19PM 4 A. I PREVIOUSLY HAD BEEN RESEARCHING THE COMPANY THROUGH

12:19PM 5 GOOGLE AND MY INTERNET --

12:19PM 6 Q. WHAT DO YOU MEAN --

12:19PM 7 A. -- SEARCHES.

12:19PM 8 Q. I'M SORRY.

12:19PM 9 A. I HEARD ABOUT THE COMPANY, AND THEN ONCE HE CONTACTED ME,

12:19PM 10 I STARTED LOOKING IT UP.

12:19PM 11 Q. SO WAS THIS GOOGLE RESEARCH, WAS THAT AT THE SAME TIME OR

12:19PM 12 AROUND THE SAME TIME THAT MR. BALWANI OFFERED YOU THE JOB?

12:19PM 13 A. I LOOKED AT IT PREVIOUSLY AND AT THE SAME TIME, YES.

12:19PM 14 Q. AND YOU SAID IT WAS BLOOD TESTING USING A DEVICE; IS THAT

12:19PM 15 RIGHT?

12:19PM 16 A. YES.

12:19PM 17 Q. AND DID YOU KNOW WHO MADE THE DEVICE? WAS IT A DEVICE

12:19PM 18 THAT THERANOS BOUGHT OR WHETHER IT A DEVICE THAT THERANOS MADE?

12:19PM 19 A. I WAS NEVER TOLD OF ANY OF THAT, NO.

12:19PM 20 Q. HOW ABOUT ONCE YOU STARTED WORKING THERE? I WAS

12:19PM 21 ORIGINALLY ASKING BEFORE YOU STARTED.

12:19PM 22 NOW YOU'VE BEEN LAB DIRECTOR. DID YOU GAIN KNOWLEDGE ON

12:20PM 23 THAT SPECIFIC QUESTION, HOW THERANOS WAS TESTING THE BLOOD?

12:20PM 24 A. NO.

12:20PM 25 Q. I'M SORRY. THE ANSWER?

12:20PM 1 A. NO.

12:20PM 2 Q. IF WE CAN NOW LOOK ON NUMBER 3, COMPENSATION.

12:20PM 3 IT SAYS THE COMPENSATION WAS \$5,000 A MONTH.

12:20PM 4 DID THERE COME A POINT IN TIME WHEN YOU ASKED TO BE PAID A

12:20PM 5 DIFFERENT WAY?

12:20PM 6 A. YES.

12:20PM 7 Q. AND DESCRIBE THAT TO THE JURY.

12:20PM 8 A. I ELECTED TO GET PAID USING STOCK OPTIONS, OR RESTRICTED

12:20PM 9 STOCK UNITS, WHATEVER THE COMPANY WAS ABLE TO DO.

12:20PM 10 Q. WHY?

12:20PM 11 A. I THOUGHT THAT THAT WOULD BE A BETTER WAY OF COMPENSATING

12:20PM 12 ME FOR MY TIME.

12:20PM 13 Q. I'D LIKE TO NOW TALK TO YOU ABOUT A PERIOD OF TIME OF

12:20PM 14 ABOUT EIGHT MONTHS, SO NOVEMBER OF 2014 THROUGH JULY OF 2015.

12:20PM 15 I'M WONDERING WHAT KIND OF WORK YOU DID FOR THERANOS

12:20PM 16 DURING THIS PERIOD OF TIME.

12:20PM 17 FIRST, CAN YOU ESTIMATE FOR THE JURY THE TOTAL NUMBER OF

12:21PM 18 HOURS THAT YOU SPENT WORKING ON THERANOS RELATED PROJECTS

12:21PM 19 DURING THIS EIGHT MONTH PERIOD OF TIME?

12:21PM 20 A. IT WAS MINIMAL. THERE WAS NO -- I WAS WAITING FOR THEM TO

12:21PM 21 ASK ME TO DO THINGS AND WOULD NOT -- WAS NOT ASKED TO DO ANY

12:21PM 22 FUNCTIONS.

12:21PM 23 SO INDEPENDENTLY, I WAS NOT ABLE TO DO ANYTHING.

12:21PM 24 Q. AND WHEN YOU SAY "IT WAS MINIMAL," DO YOU HAVE AN ABILITY

12:21PM 25 TO PUT A NUMBER?

12:21PM 1 A. A FEW HOURS, PERHAPS.

12:21PM 2 Q. SO A TOTAL OF A FEW HOURS?

12:21PM 3 A. YES.

12:21PM 4 Q. DURING THIS EIGHT MONTH PERIOD OF TIME?

12:21PM 5 A. YES.

12:21PM 6 Q. HOW ABOUT PHYSICALLY GOING TO THERANOS.

12:21PM 7 YOU DESCRIBED TO US WHERE YOUR PRACTICE IS.

12:21PM 8 A. YES.

12:21PM 9 Q. DID -- DID YOU HAVE TO GO TO THERANOS DURING THIS EIGHT

12:21PM 10 MONTHS?

12:21PM 11 A. ONCE OR TWICE IS MY RECOLLECTION.

12:21PM 12 Q. AND FOR WHAT PURPOSE?

12:21PM 13 A. FOR A TOUR.

12:21PM 14 Q. DESCRIBE THAT. WHAT DID YOU SEE ON THE TOUR?

12:21PM 15 A. THE LAB, THE LAB FACILITIES.

12:21PM 16 Q. WHO WAS PRESENT FROM THERANOS?

12:21PM 17 A. SUNNY, MR. BALWANI, AND OTHER MEMBERS OF THE STAFF.

12:22PM 18 Q. DO YOU REMEMBER THE BLOOD TESTING TECHNOLOGY BEING

12:22PM 19 DESCRIBED TO YOU?

12:22PM 20 A. IT WAS DESCRIBED, AND I WAS SHOWN -- THIS IS GOING BACK

12:22PM 21 SEVEN YEARS NOW, SO MY RECOLLECTION IS NOT AS GOOD AS IT WOULD

12:22PM 22 HAVE BEEN -- BUT I WAS SHOWN MACHINES, YES.

12:22PM 23 Q. CAN YOU DESCRIBE FOR THE JURY WHAT THE MACHINES LOOKED

12:22PM 24 LIKE?

12:22PM 25 A. LARGE BLOOD ANALYZING MACHINES. THEY'RE FAIRLY DECENT

12:22PM 1 SIZE, NOT VERY LARGE, BUT MACHINES BASICALLY.

12:22PM 2 Q. AND WHEN YOU SAY "LARGE," DO YOU MEAN -- WHAT DO YOU MEAN
12:22PM 3 BY THAT?

12:22PM 4 A. I MEAN, SITTING ON A DESKTOP. THERE WERE OTHER MACHINES
12:22PM 5 THAT WERE THERE THAT WERE PROBABLY NOT FROM THERANOS.
12:22PM 6 BUT THAT WAS MY RECOLLECTION.

12:22PM 7 Q. I WAS JUST GOING TO ASK THAT.

12:22PM 8 DO YOU HAVE A RECOLLECTION OF WHETHER THE MACHINES THAT
12:22PM 9 YOU SAW WERE MADE BY THERANOS OR WERE OFF-THE-SHELF BLOOD
12:22PM 10 ANALYZERS?

12:22PM 11 A. MY RECOLLECTION IS NOT CLEAR AT THIS POINT, BUT I RECALL
12:22PM 12 SEEING WHAT LOOKED LIKE MACHINES THAT WERE NOT THERANOS
12:22PM 13 MACHINES THAT WERE IN THE LAB, YES.

12:22PM 14 Q. HOW ABOUT DURING THIS TOUR, DID YOU LEARN WHAT -- WHICH
12:23PM 15 MACHINES THERANOS WAS ACTUALLY USING TO TEST BLOOD?

12:23PM 16 A. NO, I DID NOT.

12:23PM 17 Q. DURING THE -- THIS EIGHT MONTH PERIOD OF TIME, DID ANYBODY
12:23PM 18 FROM THE LAB EVER CALL YOU TO TALK ABOUT A PARTICULAR RESULT,
12:23PM 19 THEY WERE RUNNING BLOOD TESTS, THEY GOT A PARTICULAR RESULT,
12:23PM 20 AND THEY WANTED TO SPEAK TO YOU AS LAB DIRECTOR ABOUT THE
12:23PM 21 RESULT? DID THAT EVER OCCUR?

12:23PM 22 A. NO.

12:23PM 23 Q. WAS THERE EVER AN OCCASION -- SO THAT QUESTION WAS WITH
12:23PM 24 REGARD TO A THERANOS EMPLOYEE.

12:23PM 25 A. RIGHT.

12:23PM 1 Q. WAS THERE EVER A TIME WHEN A DOCTOR WHO HAD ORDERED LABS
12:23PM 2 SPOKE TO YOU ABOUT A THERANOS TEST RESULT?

12:23PM 3 A. NO.

12:23PM 4 Q. WAS THERE EVER A TIME THAT A PATIENT, SOMEONE WHO RECEIVED
12:23PM 5 THE RESULTS, WANTED TO SPEAK TO THE LAB DIRECTOR? DID YOU EVER
12:23PM 6 HAVE THAT EXPERIENCE?

12:23PM 7 A. NO.

12:23PM 8 Q. WAS THERE EVER A TIME WHEN SOMEONE AT THERANOS ASKED YOU
12:24PM 9 WHETHER THEY SHOULD STOP RUNNING CERTAIN BLOOD TESTS ON CERTAIN
12:24PM 10 MACHINES?

12:24PM 11 SO, FOR INSTANCE, WERE RUNNING AN HCG TEST USING THIS
12:24PM 12 MACHINE, DR. DHAWAN, SHOULD WE KEEP DOING IT OR SHOULD WE STOP?

12:24PM 13 DID YOU EVER HAVE THAT EXPERIENCE?

12:24PM 14 A. NO.

12:24PM 15 Q. I'D LIKE TO BRING YOU UP UNTIL AUGUST OF 2015.

12:24PM 16 IN AUGUST OF 2015, DID YOU -- DID YOU KNOW ABOUT AN FDA
12:24PM 17 INSPECTION AT THERANOS?

12:24PM 18 A. I WAS TOLD IT WAS COMING IN SEPTEMBER, I BELIEVE.

12:24PM 19 Q. SO YOU KNEW ABOUT AN INSPECTION IN SEPTEMBER?

12:24PM 20 A. YES.

12:24PM 21 Q. AND WAS THAT INSPECTION BY CMS, THE CENTER FOR MEDICARE
12:24PM 22 AND MEDICAID SERVICES?

12:24PM 23 A. YES.

12:24PM 24 Q. SO WHAT I'M WONDERING ABOUT IS A YEAR EARLIER, IN AUGUST,
12:25PM 25 DID YOU HAVE ANY INVOLVEMENT IN THE FDA, A DIFFERENT GOVERNMENT

12:25PM 1

AGENCY?

12:25PM 2

DO YOU REMEMBER THAT?

12:25PM 3

A. I DON'T RECALL.

12:25PM 4

Q. DURING YOUR TIME AS LAB DIRECTOR, DID YOU EVER HIRE AN

12:25PM 5

EMPLOYEE IN THE LAB, MAKE A DECISION ABOUT WHO SHOULD BE HIRED

12:25PM 6

INTO THE LAB?

12:25PM 7

A. NO.

12:25PM 8

Q. I'M SORRY?

12:25PM 9

A. NO.

12:25PM 10

Q. DID YOU EVER MAKE A DECISION ABOUT WHO SHOULD BE FIRED, AN

12:25PM 11

EMPLOYEE WAS NOT WORKING OUT IN THE LAB, DID YOU EVER TERMINATE

12:25PM 12

ANYBODY?

12:25PM 13

A. NO.

12:25PM 14

Q. HOW ABOUT REVIEWING PATIENT TEST RESULTS? WAS THERE EVER

12:25PM 15

AN OCCASION WHEN YOU WERE SENT A RESULT BECAUSE SOMEONE IN THE

12:25PM 16

LAB WANTED TO KNOW WHETHER THIS SHOULD BE RELEASED TO A

12:25PM 17

PATIENT?

12:25PM 18

DID THAT EVER HAPPEN?

12:25PM 19

A. NO.

12:25PM 20

Q. SO YOU DIDN'T REVIEW ONE PATIENT RESULT THE ENTIRE TIME?

12:25PM 21

A. NO.

12:25PM 22

Q. IF YOU NOW WOULD TURN IN YOUR BINDER TO 4520, 4520.

12:25PM 23

YOUR HONOR, 4520 HAS BEEN PREVIOUSLY ADMITTED. PERMISSION

12:26PM 24

TO PUBLISH?

12:26PM 25

THE COURT: YES.

12:26PM 1 BY MR. SCHENK:

12:26PM 2 Q. IF IT'S EASIER, DR. DHAWAN, I'M SHOWING YOU ON THE SCREEN

12:26PM 3 EXHIBIT 4520.

12:26PM 4 NOW, THIS IS AN EMAIL THAT YOU ARE NOT ON; IS THAT

12:26PM 5 CORRECT?

12:26PM 6 A. YES.

12:26PM 7 Q. AND DOES IT APPEAR, THOUGH, THAT IT WAS SENT TO

12:26PM 8 SUNNY BALWANI?

12:26PM 9 DO YOU SEE THAT?

12:26PM 10 A. YES.

12:26PM 11 Q. ON SEPTEMBER 14TH, 2015.

12:26PM 12 DO YOU SEE THAT?

12:26PM 13 A. YES.

12:26PM 14 Q. AND THERE'S TWO ATTACHMENTS. I'M GOING TO DIRECT YOUR

12:26PM 15 ATTENTION TO THE SECOND ATTACHMENT, THE ONE THAT IS AN EXCEL

12:26PM 16 FILE.

12:26PM 17 AND IF YOU WOULD NOW TURN TO PAGE 37 OF EXHIBIT 4520, AND

12:26PM 18 I'M GOING TO SHOW YOU -- FIRST THE COLUMN HEADINGS ARE

12:26PM 19 APPEARING ON THE SCREEN.

12:26PM 20 DO YOU SEE THAT?

12:26PM 21 A. YES. YES.

12:27PM 22 Q. AND WE HAVE NOW MATCHED UP THE COLUMN HEADINGS WITH THE

12:27PM 23 CONTENT OF THE COLUMNS.

12:27PM 24 DO YOU SEE THAT?

12:27PM 25 A. YES.

12:27PM 1 Q. AND IS IT EASIER FOR YOU LOOKING IN THE BINDER?

12:27PM 2 A. YEAH, I THINK I'M GOING TO LOOK ON THE SCREEN HERE, YES.

12:27PM 3 Q. OKAY. I CAN GIVE YOU A MINUTE IF YOU WANT TO --

12:27PM 4 A. NO, I'M GOOD. THANK YOU.

12:27PM 5 Q. SO I WANT TO DIRECT YOUR ATTENTION TO ONE THAT LOOKS LIKE

12:27PM 6 THE DATE IS JANUARY 28, 2015.

12:27PM 7 DO YOU SEE THAT?

12:27PM 8 A. I'M SORRY. I SEE A JANUARY 26TH -- OH, I'M SORRY.

12:27PM 9 I SEE IT RIGHT NOW, YES, ON THE LEFT SIDE.

12:27PM 10 Q. AND JUST TO CONFIRM, YOU WERE LAB DIRECTOR ON

12:27PM 11 JANUARY 28TH, 2015; IS THAT CORRECT?

12:27PM 12 A. YES.

12:27PM 13 Q. AND THE NEXT COLUMN THAT HAS CONTENT LOOKS LIKE COLLECTION

12:27PM 14 METHOD.

12:27PM 15 DO YOU SEE THAT?

12:27PM 16 A. YES.

12:27PM 17 Q. AND IT SAYS CTN.

12:28PM 18 DO YOU KNOW WHAT A CTN IS?

12:28PM 19 A. THAT'S INITIALS, BUT I DON'T KNOW WHAT THAT STANDS FOR.

12:28PM 20 Q. CTN DOESN'T HAVE MEANING TO YOU, WHAT THAT MEANS?

12:28PM 21 A. COLLECTION METHOD?

12:28PM 22 NO, IT DOES NOT.

12:28PM 23 Q. OKAY. IF WE CAN NOW GO OVER TO THE SQUARE WITH THE MOST

12:28PM 24 CONTENT, DO YOU SEE THAT SORT OF IN THE MIDDLE IT SAYS PATIENT,

12:28PM 25 AND THEN A NAME IS REDACTED.

12:28PM 1 DO YOU SEE THAT?

12:28PM 2 A. YES.

12:28PM 3 Q. AND IT TALKS ABOUT ON JANUARY 21ST, 2015, CERTAIN ASSAYS,

12:28PM 4 "SODIUM, CHLORIDE, CALCIUM, WERE ALL ABNORMAL. NO REASON FOR

12:28PM 5 THIS AS THEY HAVE NEVER BEEN ABNORMAL BEFORE, SO SHE SENT HER

12:28PM 6 BACK ON 1/27 TO HAVE THEM REPEATED, AND THEY WERE ALL NORMAL."

12:28PM 7 DO YOU SEE THAT?

12:28PM 8 A. YES.

12:28PM 9 Q. SO I THINK I NEGLECTED TO TELL YOU, BUT THE TITLE OF THE

12:28PM 10 FILE FOR THIS DOCUMENT INCLUDES THE WORD "COMPLAINTS."

12:29PM 11 DO YOU WANT TO FLIP BACK? MAYBE I SHOULD SHOW THAT TO

12:29PM 12 YOU.

12:29PM 13 PAGE 1 OF THIS EXHIBIT, THE FILE IS ENTITLED FINAL LOG OF

12:29PM 14 COMPLAINTS AND IRQ'S.

12:29PM 15 DO YOU SEE THAT?

12:29PM 16 A. WHAT IS THE PAGE NUMBER? I APOLOGIZE.

12:29PM 17 Q. PAGE 1.

12:29PM 18 A. OH, PAGE 1. I JUST SEE APPENDIX ON PAGE 1.

12:29PM 19 BUT PAGE 2 --

12:29PM 20 Q. PAGE 1 IS THE EMAIL. THE SECOND ATTACHMENT UNDER THE WORD

12:29PM 21 "RECEIVED."

12:29PM 22 IT'S ALSO ON THE SCREEN NOW IN FRONT OF YOU.

12:29PM 23 A. OKAY. GOT IT. FINAL LOG. I SEE IT.

12:30PM 24 Q. SO IN JANUARY OF 2015, WERE YOU INFORMED OF THIS

12:30PM 25 PARTICULAR PATIENT GETTING ABNORMAL SODIUM, CHLORIDE, AND

12:30PM 1 CALCIUM RESULTS?

12:30PM 2 A. NO.

12:30PM 3 Q. WERE YOU INFORMED OF A DESIRE TO HAVE THE PATIENT

12:30PM 4 RETESTED?

12:30PM 5 A. NO.

12:30PM 6 Q. DID YOU MAKE ANY DECISIONS ABOUT WHETHER THERANOS SHOULD

12:30PM 7 STILL USE WHAT IS CALLED A COLLECTION METHOD OF CTN FOR THESE

12:30PM 8 ASSAYS?

12:30PM 9 A. NO.

12:30PM 10 Q. WOULD YOU NOW TURN TO PAGE 38. IT'S THE NEXT PAGE IN THIS

12:30PM 11 CHART.

12:30PM 12 AND I'D LIKE TO NOW SHOW YOU THE ONE THAT IS NOT COLORED

12:30PM 13 PINK. IT IS THE ONE ZOOMED IN.

12:30PM 14 DO YOU SEE THAT?

12:30PM 15 A. YES.

12:30PM 16 Q. AND NOW THE DATE IS FEBRUARY 3RD, 2015.

12:30PM 17 DO YOU SEE THAT?

12:30PM 18 A. YES.

12:30PM 19 Q. AND WERE YOU LAB DIRECTOR ALSO AT THIS TIME?

12:30PM 20 A. YES.

12:30PM 21 Q. AND IS THE COLLECTION METHOD STILL CTN?

12:30PM 22 A. YES.

12:30PM 23 Q. AND THEN DO YOU SEE IN THE CONTENT, "DOCTOR," AND THEN THE

12:31PM 24 NAME IS REDACTED, "IS CONCERNED WITH THE DIFFERENCE IN OUR

12:31PM 25 RESULTS. HE SAID THAT EACH HCG RESULTS SHOULD NOT VARY THAT

12:31PM 1 MUCH FROM LAB TO LAB OR DAY-TO-DAY."

12:31PM 2 DR. DHAWAN, ARE YOU FAMILIAR WITH THE HCG TEST?

12:31PM 3 A. YES.

12:31PM 4 Q. AND WHAT IS THAT IN YOUR EXPERIENCE?

12:31PM 5 A. IT'S A PREGNANCY TEST.

12:31PM 6 Q. DID SOMEONE IN THE THERANOS LAB INFORM YOU ABOUT THIS

12:31PM 7 DOCTOR'S CONCERNS REGARDING THE HCG TESTING?

12:31PM 8 A. NO.

12:31PM 9 Q. DID YOU MAKE ANY DECISIONS ABOUT WHICH DEVICE THERANOS

12:31PM 10 SHOULD BE TESTING HCG ON?

12:31PM 11 A. NO.

12:31PM 12 Q. DID ANYBODY ASK YOU WHETHER THEY SHOULD STILL USE THIS

12:31PM 13 COLLECTION METHOD OF CTN?

12:31PM 14 A. NO.

12:31PM 15 Q. WOULD YOU NOW TURN TO PAGE 44 OF THIS COMPLAINT DOCUMENT.

12:32PM 16 I WOULD LIKE TO GO TO THE THIRD ONE DOWN, AND THIS ONE

12:32PM 17 LOOKS LIKE IT'S DATED MAY 19TH.

12:32PM 18 DO YOU SEE THAT?

12:32PM 19 A. YES.

12:32PM 20 Q. WERE YOU LAB DIRECTOR AT THE TIME?

12:32PM 21 A. YES.

12:32PM 22 Q. AND DO YOU SEE CTN AND VENOUS NOW LISTED?

12:32PM 23 A. YES.

12:32PM 24 Q. AND IF WE GO TO THE CONTENT HERE, "PSA VERY HIGH ON MAY 14

12:32PM 25 THEN NORMAL ON MAY 18 -- HE IS NOT CONVINCED THAT THE RESULTS

12:32PM 1 FROM MAY 14 ARE FOR HIS PATIENT -- POSSIBLY BELONG TO ANOTHER

12:32PM 2 PATIENT -- HE WANTS TO BE ASSURED THAT THE RESULTS FROM

12:32PM 3 MAY 18TH ARE CORRECT FOR HIS PATIENT AND POSSIBLE RERUN PSA

12:32PM 4 TOTAL."

12:32PM 5 ARE YOU FAMILIAR WITH THE ASSAY PSA?

12:32PM 6 A. YES.

12:32PM 7 Q. AND WHAT IS THAT?

12:32PM 8 A. PROSTATE SPECIFIC ANTIGEN, AND IT'S USED IN ADULT MEN OVER

12:33PM 9 50.

12:33PM 10 Q. AND WHEN THIS COMPLAINT CAME IN AROUND MAY OF 2015, DID

12:33PM 11 ANYBODY REACH OUT TO YOU ABOUT WHETHER THERANOS SHOULD CONTINUE

12:33PM 12 TESTING PSA ON CTN?

12:33PM 13 A. NO.

12:33PM 14 Q. HOW ABOUT THIS DOCTOR WHO HAS SOME CONCERNS THAT THE

12:33PM 15 RESULT DIDN'T EVEN BELONG TO HIS PATIENT? DO YOU HAVE A

12:33PM 16 RECOLLECTION OF SPEAKING TO THIS DOCTOR?

12:33PM 17 A. NO.

12:33PM 18 Q. DID ANYBODY FROM THERANOS INFORM YOU THAT THIS DOCTOR HAD

12:33PM 19 CALLED WITH THAT CONCERN?

12:33PM 20 A. NO.

12:33PM 21 Q. WOULD YOU NOW PLEASE TURN TO EXHIBIT 10527. I BELIEVE

12:33PM 22 IT'S THE LAST EXHIBIT IN YOUR BINDER.

12:33PM 23 YOUR HONOR, THE GOVERNMENT OFFERS 10527 BY STIPULATION.

12:33PM 24 MS. WALSH: ONE MOMENT, YOUR HONOR.

12:34PM 25 NO OBJECTION.

12:34PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:34PM 2 (GOVERNMENT'S EXHIBIT 10527 WAS RECEIVED IN EVIDENCE.)

12:34PM 3 MR. SCHENK: THANK YOU.

12:34PM 4 Q. DR. DHAWAN, DO YOU SEE EXHIBIT 10527 ON THE SCREEN IN

12:34PM 5 FRONT IT OF YOU?

12:34PM 6 A. YES.

12:34PM 7 Q. OR IN THE BINDER?

12:34PM 8 A. YES.

12:34PM 9 Q. AND SO I WANT TO START WITH THE EMAIL THAT BEGINS ON

12:34PM 10 TUESDAY, AUGUST 4TH, 2015.

12:34PM 11 DO YOU SEE THAT?

12:34PM 12 A. YES.

12:34PM 13 Q. AN INDIVIDUAL NAMED LANGLEY GEE WRITES YOU AN EMAIL; IS

12:34PM 14 THAT CORRECT?

12:34PM 15 A. YES.

12:34PM 16 Q. AND IN IT HE WRITES, "HI DR. DHAWAN:

12:34PM 17 "MY NAME IS LANGLEY GEE AND I AM THE QA/QC MANAGER FOR

12:34PM 18 THERANOS INC."

12:34PM 19 WAS MR. GEE INTRODUCING HIMSELF TO YOU OR HAD YOU MET HIM

12:34PM 20 BEFORE?

12:34PM 21 A. I BELIEVE HE WAS INTRODUCING HIMSELF TO ME.

12:34PM 22 Q. AND THEN TWO PARAGRAPHS DOWN HE WRITES, "MY FIRST SET OF

12:34PM 23 SEVEN DOCUMENTS (VALIDATION, SOP'S AND EMPLOYEE TRAINING) HAS

12:35PM 24 TO DO WITH THERANOS'S NEW LAUNCH OF," AND THEN IT LISTS ASSAYS.

12:35PM 25 DO YOU SEE THAT?

12:35PM 1 A. YES.

12:35PM 2 Q. AND THEN IN THAT SENTENCE JUST BEFORE WHAT WE HIGHLIGHTED,

12:35PM 3 DR. GEE SAYS HE'S GOING TO BEGIN SENDING DOCUMENTS TO YOU FOR

12:35PM 4 YOUR SIGNATURE.

12:35PM 5 A. YES.

12:35PM 6 Q. DO YOU RECALL THIS OCCURRING, INDIVIDUALS FROM THERANOS

12:35PM 7 SENDING DOCUMENTS TO YOU FOR YOU TO SIGN?

12:35PM 8 A. YES.

12:35PM 9 Q. IN THE PARAGRAPH THAT BEGINS, "ONCE," IT LOOKS LIKE HE

12:35PM 10 WRITES, "GOING FORWARD THERE WILL BE AT LEAST ANOTHER 300-400

12:35PM 11 MORE DOCUMENTS FOR YOUR REVIEW."

12:35PM 12 DR. DHAWAN, DO YOU HAVE A RECOLLECTION OF THAT, RECEIVING

12:35PM 13 A NUMBER OF DOCUMENTS AT THAT VOLUME?

12:35PM 14 A. I CAN'T RECALL THE EXACT VOLUME, BUT I DID RECEIVE

12:35PM 15 DOCUMENTS.

12:35PM 16 Q. OKAY. MANY DOCUMENTS; IS THAT FAIR?

12:35PM 17 A. YES.

12:35PM 18 Q. AND THEN IF WE GO TO THE VERY TOP OF THIS EMAIL, IT LOOKS

12:35PM 19 LIKE YOU RESPOND TO A QUESTION DR. GEE ASKS WITH "SEND 50 PER

12:36PM 20 WEEK."

12:36PM 21 IS THAT RIGHT?

12:36PM 22 A. YES.

12:36PM 23 Q. AND SO EXPLAIN TO THE JURY WHAT WAS HAPPENING THERE.

12:36PM 24 WHAT, IN FACT, WERE YOU REQUESTING?

12:36PM 25 A. I WAS REQUESTING THAT A LIMITED NUMBER OF THE DOCUMENTS BE

12:36PM 1 SENT TO ME SO THAT I WOULDN'T GET OVERWHELMED WITH TOO MANY
12:36PM 2 DOCUMENTS TO READ AND SIGN.

12:36PM 3 Q. OKAY. AND DO YOU HAVE A RECOLLECTION, WERE SOME DOCUMENTS
12:36PM 4 IN FACT SENT TO YOU ELECTRONICALLY?

12:36PM 5 A. YES, I HAVE A RECOLLECTION THAT, YES, SOME DOCUMENTS WERE
12:36PM 6 SENT.

12:36PM 7 Q. AND THEN HOW ABOUT WAS THERE AN INSTANCE WHEN YOU WENT TO
12:36PM 8 THERANOS AND PHYSICALLY SIGNED DOCUMENTS, NOT THAT YOU RECEIVED
12:36PM 9 ELECTRONICALLY, BUT ALSO?

12:36PM 10 A. YES, ONCE.

12:36PM 11 Q. OKAY. LET'S TALK ABOUT THAT.

12:36PM 12 WOULD YOU NOW TURN TO 2760 IN YOUR BINDER?

12:36PM 13 YOUR HONOR, THE GOVERNMENT OFFERS 2760 BY STIPULATION.

12:36PM 14 MS. WALSH: NO OBJECTION, YOUR HONOR.

12:36PM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:36PM 16 (GOVERNMENT'S EXHIBIT 2760 WAS RECEIVED IN EVIDENCE.)

12:37PM 17 BY MR. SCHENK:

12:37PM 18 Q. IF WE CAN START WITH PAGE 2 OF THIS EXHIBIT.

12:37PM 19 DR. DHAWAN, ON PAGE 2, DO YOU SEE AN EMAIL FROM

12:37PM 20 MR. BALWANI TO YOU ON SEPTEMBER 9TH, 2015?

12:37PM 21 A. YES.

12:37PM 22 Q. A LITTLE EARLIER YOU DESCRIBED FOR THE JURY A RECOLLECTION
12:37PM 23 OF A CMS INSPECTION. IS THAT RIGHT?

12:37PM 24 A. YES.

12:37PM 25 Q. WAS THAT INSPECTION IN SEPTEMBER OF 2015?

12:37PM 1 A. YES.

12:37PM 2 Q. WAS THIS EMAIL DESCRIBING TO YOU SOME WORK IN ADVANCE OF

12:37PM 3 THAT INSPECTION?

12:37PM 4 A. YES.

12:37PM 5 Q. SO THE FIRST -- ACTUALLY, THE PARAGRAPH THAT BEGINS "THE

12:37PM 6 ISSUANCE OF," DO YOU SEE THAT?

12:37PM 7 A. YES.

12:37PM 8 Q. DOES THAT PARAGRAPH TALK ABOUT WHAT YOU DESCRIBED TO THE

12:37PM 9 JURY EARLIER, SEEKING OPTIONS IN LIEU OF A SALARY?

12:37PM 10 A. YES.

12:37PM 11 Q. AND THEN THE NEXT PARAGRAPH THAT BEGINS, "I ALSO NEED," DO

12:37PM 12 YOU SEE THAT?

12:37PM 13 A. YES.

12:37PM 14 Q. AND SO MR. BALWANI NEEDS YOUR HELP WITH AN ADDITIONAL

12:37PM 15 MATTER. "WE HAVE A LAB AUDIT COMING UP ON 9/22 AT 9:00 A.M."

12:38PM 16 WAS THAT THE CMS INSPECTION?

12:38PM 17 A. YES.

12:38PM 18 Q. "(THESE HAPPEN ONCE EVERY TWO YEARS), AND WANTED TO SEE IF

12:38PM 19 YOU CAN BE PRESENT FOR AT LEAST THE FIRST PART OF IT."

12:38PM 20 WERE YOU, IN FACT, PRESENT FOR THE FIRST PART OF IT?

12:38PM 21 A. YES.

12:38PM 22 Q. "I HAVE A VERY CAPABLE TEAM THAT HAS TAKEN CARE OF ALL OF

12:38PM 23 THE DETAILS AS ALWAYS, BUT WOULD LIKE TO HAVE YOU HERE FOR THE

12:38PM 24 FIRST PART OR SO AND THE INTRODUCTION OF OUR TEAM. IN

12:38PM 25 PREPARATION FOR THE LAB AUDIT, I WILL PERSONALLY WALK YOU

12:38PM 1 THROUGH ALL OF THE LATEST UPDATES WITH OUR TEAM -- WE HAVE
12:38PM 2 HIRED MANY EXPERTS FROM THE INDUSTRY TO MAKE SURE LAB IS
12:38PM 3 FLAWLESS AND AUDIT READY, SO I DON'T ANTICIPATE ANY HICCUPS,
12:38PM 4 BUT AS ALWAYS, WANT YOU TO BE FAMILIAR WITH IT."

12:38PM 5 GOING INTO THE AUDIT, SO THIS MONTH OF SEPTEMBER,
12:38PM 6 DR. DHAWAN, DID YOU RELY ON STATEMENTS LIKE THIS FROM
12:39PM 7 MR. BALWANI TO HELP IN THE PREPARATION?

12:39PM 8 A. YES.

12:39PM 9 Q. DID YOU BELIEVE THAT MR. BALWANI HAD THIS TEAM THAT HE
12:39PM 10 DESCRIBED AND THAT THERE WOULDN'T BE HICCUPS?

12:39PM 11 A. YES.

12:39PM 12 Q. IF WE NOW COULD TURN TO THE FIRST PAGE.

12:39PM 13 THE FIRST PAGE OF 2760, ARE YOU JUST GENERALLY TALKING
12:39PM 14 ABOUT WHEN YOU WOULD GO INTO THERANOS TO SIGN DOCUMENTS?

12:39PM 15 A. YES.

12:39PM 16 Q. DO YOU SEE WHERE HE SAYS "CAN WE DO TOMORROW AT 6:00 P.M.
12:39PM 17 FOR SIGNING AND WALK THROUGH?"

12:39PM 18 IT'S TOWARDS THE BOTTOM.

12:39PM 19 A. YES.

12:39PM 20 Q. AND DID THAT, IN FACT, HAPPEN? WAS THERE AN OCCASION WHEN
12:39PM 21 YOU WENT TO THERANOS TO SIGN DOCUMENTS?

12:39PM 22 A. YES.

12:39PM 23 Q. WOULD YOU TURN TO 2772?

12:39PM 24 YOUR HONOR, THE GOVERNMENT OFFERS 2772 BY STIPULATION.

12:40PM 25 MS. WALSH: NO OBJECTION.

12:40PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:40PM 2 (GOVERNMENT'S EXHIBIT 2772 WAS RECEIVED IN EVIDENCE.)

12:40PM 3 BY MR. SCHENK:

12:40PM 4 Q. IF WE COULD START WITH THE EMAIL ON THE BOTTOM.

12:40PM 5 ON MONDAY, SEPTEMBER 14TH, 2015, MR. BALWANI WRITES TO

12:40PM 6 YOU, "THANKS FOR DROPPING BY.

12:40PM 7 "I NEED COUPLE OF HOURS FROM YOU THIS COMING WEEKEND.

12:40PM 8 UNFORTUNATELY I HAVE CLOSE TO 300 SOP'S THAT NEED SIGNING. I

12:40PM 9 CAN HAVE TEAM SEND THIS OUT 50 AT A TIME EACH DAY THIS WEEK

12:40PM 10 ELECTRONICALLY AS THAT MIGHT BE EASIER. SORRY FOR THE LAST

12:40PM 11 MINUTE ON THIS. I WAS TRYING TO FIND A WAY TO AVOID DOING THIS

12:40PM 12 MANUALLY... THANKS IN ADVANCE."

12:40PM 13 AND THEN DO YOU SEE YOUR RESPONSE TO MR. BALWANI ON THE

12:40PM 14 TOP OF THIS PAGE?

12:40PM 15 A. YES.

12:40PM 16 Q. AND DO YOU, IN FACT, DECLINE HIS INVITATION TO SIGN

12:40PM 17 ELECTRONICALLY, BUT INSTEAD SAY YOU'LL COME IN ON SATURDAY?

12:41PM 18 A. YES.

12:41PM 19 Q. AND JUST BY DOING THE MATH, WAS SATURDAY SEPTEMBER 19TH

12:41PM 20 THEN, IF THIS WAS TUESDAY, THE 15TH?

12:41PM 21 A. I WOULD THINK SO. I DON'T RECALL.

12:41PM 22 Q. DID YOU GO INTO THERANOS THAT SATURDAY TO SIGN SOME

12:41PM 23 DOCUMENTS?

12:41PM 24 A. I WENT IN ON A SATURDAY, YES.

12:41PM 25 MR. SCHENK: YOUR HONOR, MAY I APPROACH?

12:41PM 1 THE COURT: YES.

12:41PM 2 MR. SCHENK: (HANDING.)

12:41PM 3 Q. DR. DHAWAN, I'VE HANDED YOU A BINDER OF DOCUMENTS THAT
12:41PM 4 HAVE BEEN PREVIOUSLY ADMITTED IN THIS TRIAL AND THEY CONTAIN
12:41PM 5 VALIDATION REPORTS.

12:41PM 6 WHAT I WOULD ASK YOU TO DO, FIRST, IS LOOK AT A TAB IN
12:41PM 7 THERE, 9086.

12:42PM 8 DO YOU SEE THAT DOCUMENT?

12:42PM 9 A. YES.

12:42PM 10 Q. AND DO YOU SEE YOUR SIGNATURE ON THAT DOCUMENT?

12:42PM 11 A. I DO NOT.

12:42PM 12 Q. OKAY. OTHER THAN THAT DOCUMENT, I'M GOING TO ASK YOU TO
12:42PM 13 LOOK AT THE REST OF THE DOCUMENTS IN THIS BINDER AND TELL ME IF
12:42PM 14 THERE ARE ANY THAT YOU DID NOT SIGN ON 9-19-2015, ON
12:42PM 15 SEPTEMBER 19TH, 2015?

12:42PM 16 A. ARE YOU ASKING ME TO LOOK AT SECTION 9086, OR ALL OF THE
12:42PM 17 WHOLE THING?

12:42PM 18 Q. YEAH, EVERY OTHER DOCUMENT IN THE BINDER, OTHER THAN THAT
12:42PM 19 ONE.

12:42PM 20 A. YES, I'M NOTICING MY SIGNATURE ON ALL OF THE OTHER
12:42PM 21 DOCUMENTS, YES.

12:43PM 22 (PAUSE IN PROCEEDINGS.)

12:43PM 23 THE WITNESS: YES, IT APPEARS THAT MY SIGNATURE IS
12:43PM 24 ON ALL OF THESE DOCUMENTS, YES.

12:43PM 25 BY MR. SCHENK:

12:43PM 1 Q. SO IS IT TRUE THAT OTHER THAN EXHIBIT 9086, YOU SIGNED
12:43PM 2 EVERY ONE OF THOSE ON SEPTEMBER 19TH?

12:43PM 3 A. YES.

12:43PM 4 Q. AND FOR THE RECORD, YOUR HONOR, I BELIEVE THIS WAS A
12:43PM 5 DEFENSE EXHIBIT ADMITTED THROUGH DR. ROSENDORFF.

12:43PM 6 WHEN YOU WERE SIGNING THESE DOCUMENTS -- I HAVE A FEW
12:43PM 7 QUESTIONS ABOUT YOUR PROCESS.

12:43PM 8 A. YES.

12:43PM 9 Q. DID MR. BALWANI OR SOMEONE ELSE HAND THEM TO YOU, OR DO
12:43PM 10 YOU HAVE A RECOLLECTION OF THAT?

12:43PM 11 A. THEY WERE PLACED IN FRONT OF ME, YES.

12:43PM 12 Q. DO YOU REMEMBER WHO PLACED THEM, OR YOU DON'T REMEMBER?

12:43PM 13 A. I BELIEVE IT WAS MR. BALWANI, BUT IT MAY HAVE BEEN ONE OF
12:43PM 14 HIS STAFF. I JUST DON'T RECALL.

12:43PM 15 Q. UM, WHEN YOU -- DID YOU READ THE DOCUMENTS WHEN YOU SIGNED
12:43PM 16 THEM?

12:43PM 17 A. I LOOKED THROUGH THEM, YES.

12:44PM 18 Q. OKAY. WHAT DO YOU MEAN, "LOOKED THROUGH THEM"?

12:44PM 19 A. I LOOKED AND SAW THAT THEY HAD BEEN SIGNED BY
12:44PM 20 ADAM ROSENDORFF APPROXIMATELY A YEAR EARLIER.

12:44PM 21 Q. AND HELP ME UNDERSTAND THAT.

12:44PM 22 DID THAT MATTER TO YOU THAT ADAM ROSENDORFF SIGNED IT A
12:44PM 23 YEAR EARLIER?

12:44PM 24 A. THAT WAS IMPORTANT BECAUSE HE WAS THE PREVIOUS DIRECTOR
12:44PM 25 THAT HAD BEEN THERE, YES.

12:44PM 1 Q. AND WHY IS THAT IMPORTANT? WHY DID THAT MATTER?

12:44PM 2 A. THAT MEANS THAT SOMEBODY ELSE LOOKED AT IT BEFORE ME.

12:44PM 3 Q. OKAY. WHEN YOU WERE LOOKING THROUGH THE DOCUMENTS, WAS

12:44PM 4 THERE ANY OCCASION WHEN YOU MADE A COMMENT? AND BY THAT I MEAN

12:44PM 5 DID YOU LOOK THROUGH THE DOCUMENTS AND SAY, YOU KNOW WHAT, I

12:44PM 6 DON'T THINK THIS SHOULD BE HERE, I WANT THIS CHANGE MADE?

12:44PM 7 DID YOU MAKE ANY EDITS OR HAVE ANY COMMENTS ON ANY

12:44PM 8 DOCUMENT THAT YOU SIGNED THAT DAY?

12:44PM 9 A. NO.

12:44PM 10 Q. IN THE DOCUMENTS, DO YOU SEE REFERENCES TO SOMETHING

12:44PM 11 CALLED AN EDISON?

12:44PM 12 A. I'M LOOKING AT THE DOCUMENTS THEMSELVES.

12:45PM 13 I DON'T SEE IT IN THE DOCUMENTS THAT I'M LOOKING AT RIGHT

12:45PM 14 AT THIS POINT.

12:45PM 15 Q. DO YOU KNOW WHAT AN EDISON IS?

12:45PM 16 A. THAT IS THE DEVICE THAT THERANOS HAD.

12:45PM 17 Q. AND HOW DID YOU KNOW THAT?

12:45PM 18 A. I KNEW THAT BECAUSE I LOOKED ALL OF THIS STUFF UP.

12:45PM 19 Q. AND WHEN YOU SAY YOU LOOKED IT UP, WHAT DO YOU MEAN?

12:45PM 20 A. I RESEARCHED IT PREVIOUSLY.

12:45PM 21 Q. AND IS THIS THE REFERENCE TO WHAT YOU WERE TELLING US

12:45PM 22 EARLIER --

12:45PM 23 A. YES.

12:45PM 24 Q. -- ABOUT GOOGLE?

12:45PM 25 A. YES.

12:45PM 1 Q. WHEN YOU WERE SIGNING THESE DOCUMENTS, DID YOU SEE ANY
12:45PM 2 ACTUAL BLOOD TESTS RUN THAT DAY?

12:45PM 3 A. NO.

12:45PM 4 Q. WHEN YOU WERE SIGNING THE DOCUMENTS, DID YOU SPEAK TO
12:45PM 5 ANYBODY ELSE WHOSE SIGNATURE APPEARED ON THE DOCUMENTS?

12:45PM 6 YOU TOLD US ABOUT ADAM ROSENDORFF. DID YOU TALK TO HIM
12:45PM 7 WHEN YOU WERE SIGNING THE DOCUMENTS?

12:45PM 8 A. HE WAS NOT THERE, SO I DIDN'T GET A CHANCE TO TALK TO HIM.

12:45PM 9 Q. YOU UNDERSTOOD HE WAS NOT AT THERANOS?

12:45PM 10 A. YES.

12:45PM 11 Q. HOW ABOUT OTHER INDIVIDUALS THAT SIGNED THE DOCUMENTS?
12:45PM 12 DID YOU HAVE AN OPPORTUNITY TO CONSULT WITH ANYBODY ELSE?

12:45PM 13 A. NO.

12:45PM 14 Q. WHEN YOU WERE SIGNING THE DOCUMENTS, DID YOU KNOW WHETHER
12:46PM 15 THEY REFLECTED TESTS THAT WERE BEING RUN IN THE CLINICAL LAB?

12:46PM 16 A. THAT WAS WHAT WAS SHOWN TO ME, YES.

12:46PM 17 Q. AND DID YOU KNOW HOW THE TESTS WERE PERFORMING WHEN YOU
12:46PM 18 SIGNED THE DOCUMENTS?

12:46PM 19 A. IN GENERAL. BUT SPECIFICALLY WITH EACH TEST, WHAT WAS
12:46PM 20 SHOWN TO ME IS WHAT WAS SHOWN TO ME. BUT --

12:46PM 21 Q. SO WHEN YOU WERE SHOWN A DOCUMENT ABOUT AN ASSAY OR A TEST
12:46PM 22 THAT WAS RUNNING IN THE CLINICAL LAB --

12:46PM 23 A. YES.

12:46PM 24 Q. -- I GUESS I'M WONDERING, DID YOU HAVE THE OPPORTUNITY TO
12:46PM 25 SEE OR ASK ANYBODY QUESTIONS ABOUT WHETHER IN THE CLINICAL LAB

12:46PM 1 THE ASSAY WAS ACTUALLY WORKING, TESTING ACCURATELY?

12:46PM 2 A. I DIDN'T GET A CHANCE TO ASK HIM THAT QUESTION.

12:46PM 3 Q. OKAY. AND -- BUT YOU SIGNED IT. IS THAT FAIR?

12:46PM 4 A. YES.

12:46PM 5 Q. IF WE CAN NOW TALK ABOUT THE CMS AUDIT.

12:47PM 6 YOU SAID TO US A MOMENT AGO THAT YOU WENT TO THE AUDIT; IS

12:47PM 7 THAT RIGHT?

12:47PM 8 A. YES.

12:47PM 9 Q. AND WHAT DO YOU REMEMBER ABOUT YOUR ATTENDANCE THERE? HOW

12:47PM 10 LONG WERE YOU THERE?

12:47PM 11 A. I WAS THERE FROM APPROXIMATELY 8:00 OR 8:30 TO ABOUT 10:00

12:47PM 12 IN THE MORNING.

12:47PM 13 Q. AND WHAT DID YOU DO DURING THE AUDIT?

12:47PM 14 A. I WAS THERE -- I WAS INTRODUCED, AND THEN THE CMS AUDITOR,

12:47PM 15 ALONG WITH A REPRESENTATIVE FROM THE STATE OF CALIFORNIA -- MY

12:47PM 16 RECOLLECTION IS NOT 100 PERCENT CLEAR, BUT THERE WERE SEVERAL

12:47PM 17 INDIVIDUALS FROM CMS AND I BELIEVE FROM THE STATE.

12:47PM 18 AND THEY WERE INQUIRING -- YOU KNOW, DOING A CONVERSATION

12:47PM 19 WITH THE THERANOS STAFF, INCLUDING MR. BALWANI AND OTHERS, AND

12:47PM 20 I WAS SITTING IN THE BACK OF THE ROOM OR THE SIDE OF THE ROOM.

12:47PM 21 Q. DID YOU MAKE ANY PRESENTATIONS?

12:48PM 22 A. NO.

12:48PM 23 Q. DO YOU REMEMBER IF ANYBODY FROM CMS OR THE STATE ASKED YOU

12:48PM 24 QUESTIONS?

12:48PM 25 A. THEY DIDN'T ASK ME ANYTHING, NO.

12:48PM 1 Q. THEY DID NOT ASK YOU?

12:48PM 2 A. NO.

12:48PM 3 Q. IF YOU'LL NOW TURN TO 2791.

12:48PM 4 DO YOU HAVE THAT IN FRONT OF YOU?

12:48PM 5 A. YES.

12:48PM 6 Q. IS THIS AN EMAIL FROM SOMEONE NAMED MONA RAMAMURTHY TO

12:48PM 7 YOU?

12:48PM 8 A. YES.

12:48PM 9 Q. AND DOES IT INCLUDE AN EMPLOYMENT AGREEMENT FROM THERANOS?

12:48PM 10 A. YES.

12:48PM 11 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 2791.

12:48PM 12 MS. WALSH: IS THIS BEING OFFERED PURSUANT TO

12:48PM 13 803(6)?

12:48PM 14 MR. SCHENK: YES.

12:49PM 15 MS. WALSH: THEN NO OBJECTION.

12:49PM 16 THE COURT: IT'S ADMITTED PURSUANT TO 803(6) AS A

12:49PM 17 BUSINESS RECORD, AND IT CAN BE PUBLISHED.

12:49PM 18 MR. SCHENK: THANK YOU, YOUR HONOR.

12:49PM 19 (GOVERNMENT'S EXHIBIT 2791 WAS RECEIVED IN EVIDENCE.)

12:49PM 20 BY MR. SCHENK:

12:49PM 21 Q. DR. DHAWAN, IN THIS EMAIL, WHICH IS DATED SEPTEMBER 21ST,

12:49PM 22 2015, DO YOU SEE MS. RAMAMURTHY CONGRATULATING YOU ON YOUR

12:49PM 23 TERMS OF EMPLOYMENT JOINING THERANOS?

12:49PM 24 A. YES.

12:49PM 25 Q. AND WAS SEPTEMBER 21ST THE DAY BEFORE THE CMS INSPECTION?

12:49PM 1 A. I BELIEVE SO, YES.

12:49PM 2 THE CMS INSPECTION WAS THAT WEDNESDAY, I BELIEVE. I

12:49PM 3 BELIEVE IT WAS WEDNESDAY MORNING. IT MAY HAVE BEEN EITHER THE

12:49PM 4 22ND OR THE -- IT WAS THE 22ND. IT WAS THE DAY BEFORE, YES.

12:49PM 5 Q. IT WAS EITHER ONE OR TWO DAYS BEFORE?

12:49PM 6 A. YES, YES.

12:49PM 7 Q. AND IN THE -- LET'S TURN TO PAGE 2 OF THE EXHIBIT.

12:49PM 8 DO YOU SEE AN AT WILL EMPLOYMENT AGREEMENT?

12:49PM 9 A. YES.

12:49PM 10 Q. HAD YOU BEEN THE THERANOS LAB DIRECTOR SINCE THE PRIOR

12:49PM 11 NOVEMBER BY THIS TIME?

12:50PM 12 A. YES.

12:50PM 13 Q. WHY THEN DID YOU RECEIVE AN EMPLOYMENT AGREEMENT A DAY OR

12:50PM 14 TWO DAYS BEFORE THE CMS INSPECTION IF YOU HAD BEEN WORKING AS

12:50PM 15 LAB DIRECTOR SINCE THE PRIOR NOVEMBER?

12:50PM 16 A. I'M NOT SURE WHY THEY SENT IT TO ME THAT LATE.

12:50PM 17 Q. YOU DON'T KNOW WHY THEY DID?

12:50PM 18 A. NO.

12:50PM 19 Q. IF YOU'LL NOW TURN TO PAGE 12.

12:50PM 20 DO YOU SEE HERE A LETTER TO YOU THAT ANNOUNCES

12:50PM 21 CONFIRMATION OF THE TERMS OF YOUR EMPLOYMENT AS LAB DIRECTOR

12:50PM 22 REPORTING TO SUNNY BALWANI?

12:50PM 23 DO YOU SEE THAT IN THE VERY FIRST SENTENCE?

12:50PM 24 A. YES.

12:50PM 25 Q. AND AGAIN, IS THAT TRUE, DID YOU REPORT TO MR. BALWANI AS

12:50PM 1 THE LAB DIRECTOR?

12:50PM 2 A. HE WAS MY ONLY CONTACT AT THE COMPANY, YES.

12:50PM 3 Q. AND DO YOU SEE, ABOUT HALFWAY DOWN THE PAGE, IT SAYS,

12:50PM 4 "YOUR START DATE WITH THE COMPANY IS JUNE 1ST, 2015"?

12:51PM 5 A. YES.

12:51PM 6 Q. HAD YOU BEEN, IN FACT, WORKING AS LAB DIRECTOR MUCH BEFORE

12:51PM 7 JUNE 1ST, 2015?

12:51PM 8 A. YES.

12:51PM 9 Q. SINCE THE PRIOR NOVEMBER?

12:51PM 10 A. YES.

12:51PM 11 Q. WOULD YOU NOW TURN TO TAB 4528.

12:51PM 12 YOUR HONOR, THE GOVERNMENT OFFERS 4528 PURSUANT TO

12:51PM 13 STIPULATION.

12:51PM 14 MS. WALSH: NO OBJECTION.

12:51PM 15 THE COURT: IT'S ADMITTED AND MAY BE PUBLISHED.

12:51PM 16 (GOVERNMENT'S EXHIBIT 4528 WAS RECEIVED IN EVIDENCE.)

12:51PM 17 BY MR. SCHENK:

12:51PM 18 Q. DR. DHAWAN, THIS IS CALLED A CLIA LABORATORY OVERVIEW AND

12:51PM 19 IT'S DATED SEPTEMBER 22ND, 2015.

12:51PM 20 DO YOU SEE THAT?

12:51PM 21 A. YES.

12:51PM 22 Q. AND TAKE A MOMENT TO FLIP THROUGH IT. I'M WONDERING IF

12:51PM 23 YOU RECALL THIS BEING A SLIDE DECK THAT WAS SHOWN DURING THE

12:51PM 24 CMS INSPECTION.

12:51PM 25 A. I DON'T RECALL THIS, THIS SLIDE OR SLIDE DECK.

12:52PM 1 Q. OKAY. DO YOU REMEMBER WHETHER CMS WAS SHOWN ANY SLIDES?

12:52PM 2 A. I DON'T RECALL THEM BEING SHOWN THE SLIDES WHEN I WAS

12:52PM 3 THERE IN THE MEETING.

12:52PM 4 Q. OKAY. I'D LIKE TO SHOW YOU A FEW PAGES IN IT. IF YOU

12:52PM 5 COULD TURN TO PAGE 3.

12:52PM 6 WE SEE ON PAGE 3 COLLECTION SITES ON THIS MAP.

12:52PM 7 DO YOU SEE THAT IT LOOKS LIKE THERE'S ONE IN CALIFORNIA

12:52PM 8 AND 42 IN ARIZONA.

12:52PM 9 DO YOU SEE THAT?

12:52PM 10 A. YES.

12:52PM 11 Q. AND THEN ONE IN PENNSYLVANIA. DID YOU KNOW THAT THERANOS

12:52PM 12 HAD A COLLECTION SITE IN PENNSYLVANIA?

12:52PM 13 A. I DON'T RECALL THE PENNSYLVANIA SITE. I KNEW ABOUT THE

12:52PM 14 ONES IN ARIZONA AND CALIFORNIA.

12:52PM 15 Q. YOU WERE FAMILIAR WITH --

12:52PM 16 A. THAT THEY HAD COLLECTION SITES IN THESE TWO STATES.

12:52PM 17 Q. IN ARIZONA AND CALIFORNIA?

12:52PM 18 A. YES.

12:52PM 19 Q. BUT NOT PENNSYLVANIA?

12:52PM 20 A. I DON'T RECALL.

12:52PM 21 Q. WOULD YOU NOW TURN TO THE SLIDE ON PAGE 5.

12:53PM 22 ON PAGE 5, IT'S TITLED NEWARK, CALIFORNIA CLIA LABORATORY.

12:53PM 23 IS THAT CONSISTENT WITH YOUR UNDERSTANDING? WAS

12:53PM 24 THERANOS'S CLIA LAB IN NEWARK, CALIFORNIA?

12:53PM 25 A. YES.

12:53PM 1 Q. AND THEN IF YOU'LL LOOK AT THE LICENSE ON THE RIGHT, THE
12:53PM 2 IMAGE, THERE ARE TWO NAMES ON THAT.

12:53PM 3 IS YOUR NAME ONE OF THE NAMES LISTED AS LAB DIRECTOR?

12:53PM 4 A. YES.

12:53PM 5 Q. AND THEN UNDER YOUR NAME THERE IS SOMEONE NAMED
12:53PM 6 LYNETTE SAWYER.

12:53PM 7 DO YOU SEE THAT?

12:53PM 8 A. YES.

12:53PM 9 Q. AND DO YOU KNOW WHO THAT IS?

12:53PM 10 A. SHE WAS ANOTHER LAB DIRECTOR.

12:53PM 11 Q. AT THERANOS?

12:53PM 12 A. YES.

12:53PM 13 Q. DID YOU -- HAVE YOU EVER MET HER?

12:53PM 14 A. NO.

12:53PM 15 Q. DID YOU EVER CONSULT WITH HER AND TALK ABOUT LAB TESTING
12:53PM 16 OR ANYTHING?

12:53PM 17 A. NO.

12:53PM 18 Q. HOW DO YOU KNOW SHE WAS A LAB DIRECTOR AT THERANOS?

12:53PM 19 A. I FOUND OUT LATER.

12:53PM 20 Q. AND WHEN YOU SAY "LATER," DO YOU MEAN AFTER YOU WERE NO
12:53PM 21 LONGER LAB DIRECTOR AT THERANOS?

12:53PM 22 A. YES.

12:53PM 23 Q. AND SO WHILE YOU WERE LAB DIRECTOR, WE SAW THAT BEGINNING
12:53PM 24 IN NOVEMBER OF 2014, YOU DIDN'T KNOW ABOUT LYNETTE SAWYER AT
12:54PM 25 THAT POINT; IS THAT RIGHT?

12:54PM 1 A. YEAH, I DID NOT KNOW.

12:54PM 2 Q. WOULD YOU TURN NOW TO PAGE 6.

12:54PM 3 PAGE 6 SAYS THAT, "ALL HIGH-COMPLEXITY SAMPLES ARE SHIPPED

12:54PM 4 TO THE NEWARK LAB."

12:54PM 5 AND THEN IT LOOKS LIKE THE ARROWS ARE COMING FROM

12:54PM 6 PENNSYLVANIA AND ARIZONA.

12:54PM 7 I'M WONDERING IF YOU KNEW ABOUT THIS. DID YOU KNOW THAT

12:54PM 8 THERANOS WAS COLLECTING SAMPLES IN ARIZONA AND SENDING THEM TO

12:54PM 9 THE CALIFORNIA LAB IN NEWARK?

12:54PM 10 A. I KNEW THAT THE CALIFORNIA LAB IN NEWARK WAS DOING THE

12:54PM 11 WORK, YES.

12:54PM 12 Q. HOW ABOUT ANY LABS IN ARIZONA? DID YOU KNOW WHETHER SOME

12:54PM 13 TESTS THAT WERE DONE IN ARIZONA WERE BEING TESTED IN ARIZONA,

12:54PM 14 OR DID YOU THINK THAT THEY WERE ALL BEING SHIPPED?

12:54PM 15 A. I DID NOT KNOW WHAT PERCENTAGE WAS BEING DONE AT WHICH

12:54PM 16 FACILITY.

12:54PM 17 Q. AND WHEN YOU SAY YOU DIDN'T KNOW WHAT PERCENT, DOES THAT

12:55PM 18 MEAN THAT YOU KNEW OF AT LEAST SOME?

12:55PM 19 A. MY RECOLLECTION WAS THAT THERE WAS SOME BEING DONE IN

12:55PM 20 ARIZONA, BUT I DON'T REMEMBER CLEARLY HOW MANY OR WHAT

12:55PM 21 PERCENTAGE.

12:55PM 22 Q. HOW ABOUT WHAT DISTINGUISHED BETWEEN THE TWO? DID YOU

12:55PM 23 KNOW WHAT CAUSED A SAMPLE THAT WAS COLLECTED IN ARIZONA TO BE

12:55PM 24 TESTED IN ARIZONA VERSUS TESTED IN CALIFORNIA?

12:55PM 25 A. I DID NOT.

12:55PM 1 Q. DID, DID MR. BALWANI OR ANYBODY AT THERANOS EVER TALK TO
12:55PM 2 YOU ABOUT THAT DECISION, ABOUT SOME SAMPLES GOING TO ARIZONA
12:55PM 3 VERSUS CALIFORNIA?

12:55PM 4 A. THEY DID NOT.

12:55PM 5 Q. WOULD YOU NOW TURN TO PAGE 9.

12:55PM 6 PAGE 9 IS A CLIA LAB ORG CHART.

12:55PM 7 DO YOU SEE THAT?

12:55PM 8 A. YES.

12:55PM 9 Q. SO IF WE COULD FIRST FOCUS ON THOSE -- THE THREE BOXES
12:55PM 10 THAT INCLUDE MS. HOLMES, MR. BALWANI, AND YOU.

12:55PM 11 A. YES.

12:55PM 12 Q. DO YOU SEE THOSE?

12:55PM 13 A. YES.

12:55PM 14 Q. IS THAT ACCURATE IN YOUR EXPERIENCE? DID -- WAS YOUR
12:55PM 15 UNDERSTANDING THAT MS. HOLMES WAS CEO, MR. BALWANI WAS
12:55PM 16 PRESIDENT AND COO, AND YOU WERE THE LABORATORY DIRECTOR?

12:56PM 17 A. I'M SEEING IT IN THIS ORGANIZATIONAL CHART. I DID NOT SEE
12:56PM 18 THIS CHART PREVIOUSLY.

12:56PM 19 Q. HOW ABOUT JUST YOUR EXPERIENCE AT THERANOS? IS THIS
12:56PM 20 CONSISTENT WITH WHAT YOU EXPERIENCED AT THERANOS?

12:56PM 21 A. MY EXPERIENCE WAS THAT I WAS GOING TO BE A CONSULTANT FOR
12:56PM 22 A LIMITED AMOUNT OF TIME.

12:56PM 23 Q. OKAY. WAS THAT DIFFERENT THAN WHAT -- THAN REALITY?

12:56PM 24 A. I WAS SUPPOSED TO BE A CONSULTANT. THIS IS A MUCH MORE
12:56PM 25 EXTENSIVE ORGANIZATIONAL CHART THAN I WOULD HAVE PRESUMED.

12:56PM 1 Q. OKAY. IF WE CAN NOW LOOK AT THE BOX TO THE RIGHT THAT'S
12:56PM 2 CALLED CLINICAL LABORATORY ASSISTANT.
12:56PM 3 DO YOU SEE THAT?
12:56PM 4 A. YES.
12:56PM 5 Q. AND DO YOU KNOW WHAT CLINICAL LABORATORY ASSISTANTS, OR
12:56PM 6 CLA'S, ARE?
12:56PM 7 A. THEY'RE PEOPLE THAT WORK IN THE LABORATORY, YES, AND WE'VE
12:56PM 8 SEEN THEM IN OTHER LABORATORIES THAT WE'VE INTERACTED WITH.
12:56PM 9 Q. HOW ABOUT IN YOUR PRACTICE? DO YOU HAVE CLA'S?
12:56PM 10 A. NO.
12:57PM 11 Q. IN THIS BOX, DO YOU SEE, ABOUT SIX OR SEVEN NAMES DOWN, DO
12:57PM 12 YOU SEE MR. BALWANI'S NAME?
12:57PM 13 A. SIX OR SEVEN? YES.
12:57PM 14 Q. DID YOU KNOW THAT MR. BALWANI WAS BOTH A CLA AND ALSO THE
12:57PM 15 CHIEF OPERATING OFFICER AND PRESIDENT?
12:57PM 16 A. I DID NOT.
12:57PM 17 Q. DID MR. BALWANI -- DID YOU APPROVE ANY OF THE INDIVIDUALS
12:57PM 18 WHO BECAME CLA'S AT THE THERANOS CLIA LAB?
12:57PM 19 A. NO.
12:57PM 20 Q. DID MR. BALWANI ASK YOU IF HE COULD BE A CLA IN THE LAB?
12:57PM 21 A. NO, I NEVER WAS ASKED.
12:57PM 22 Q. HOW ABOUT THE HIRING OF ANY INDIVIDUALS? WE SEE A LIST OF
12:57PM 23 NAMES HERE. DID YOU MAKE ANY HIRING DECISIONS?
12:57PM 24 A. NO.
12:57PM 25 Q. HOW ABOUT SPEAKING WITH? DID YOU SPEAK WITH -- OTHER THAN

12:57PM 1 MR. BALWANI, WERE THERE INDIVIDUALS HERE THAT YOU HAD
12:57PM 2 CONVERSATIONS WITH ABOUT PARTICULAR LAB TESTS, WHETHER A RESULT
12:57PM 3 SHOULD BE REPORTED TO A PATIENT?
12:57PM 4 A. NO.
12:57PM 5 Q. JUST ONE FINAL QUESTION ON THIS. WOULD YOU TURN TO
12:58PM 6 PAGE 12.
12:58PM 7 ON PAGE 12 THERE'S A DESCRIPTION OF YOU AND THE TITLE LAB
12:58PM 8 DIRECTOR.
12:58PM 9 DO YOU SEE THAT?
12:58PM 10 A. YES.
12:58PM 11 Q. AND I'M JUST WONDERING IF THIS IS ACCURATE.
12:58PM 12 A. YES.
12:58PM 13 MR. SCHENK: YOUR HONOR, NOW I'D LIKE PERMISSION TO
12:58PM 14 PUBLISH 5 -- ONE LAST QUESTION.
12:58PM 15 Q. SO DURING THE INSPECTION, YOU SAID THAT YOU WERE PRESENT
12:58PM 16 FOR HOW LONG?
12:58PM 17 A. APPROXIMATELY TWO HOURS.
12:58PM 18 Q. AND DID YOU GET A SENSE IN THOSE TWO HOURS HOW THE
12:58PM 19 INSPECTION WAS GOING?
12:58PM 20 BY THAT I MEAN, DID YOU FEEL A MEASURE OF CONCERN, OR DID
12:58PM 21 YOU THINK THAT THE INSPECTION WAS GOING OKAY? DID YOU HAVE AN
12:58PM 22 OPINION.
12:58PM 23 A. I DID NOT HAVE AN OPINION.
12:58PM 24 Q. AT THE END OF TWO HOURS, DID YOU LEAVE THE BUILDING, OR
12:59PM 25 LEAVE THERANOS?

12:59PM 1 A. I ASKED IF I WAS NEEDED FOR ANY FURTHER DUTIES, AND I WAS
12:59PM 2 TOLD THAT THERE WAS NOTHING ELSE THAT I NEEDED TO BE THERE FOR.
12:59PM 3 Q. WHO DID YOU ASK?
12:59PM 4 A. I BELIEVE I ASKED MR. BALWANI.
12:59PM 5 Q. HAVE YOU MET ELIZABETH HOLMES BEFORE?
12:59PM 6 A. ONCE.
12:59PM 7 Q. AND WHEN WAS THAT?
12:59PM 8 A. THE DAY OF THE INSPECTION MY RECOLLECTION IS.
12:59PM 9 Q. AND DESCRIBE THAT CIRCUMSTANCE TO THE JURY. WHERE DID YOU
12:59PM 10 MEET HER?
12:59PM 11 A. I WAS SITTING OUTSIDE OF THE ROOM WHERE THE INSPECTION WAS
12:59PM 12 BEING DONE, AND SHE WALKED BY AND SAID HELLO AND SAID THANK YOU
12:59PM 13 FOR BEING HERE.
12:59PM 14 Q. AND DID YOU HAVE FURTHER CONVERSATIONS WITH MS. HOLMES ON
12:59PM 15 THAT DAY?
12:59PM 16 A. NO.
12:59PM 17 Q. AND HOW ABOUT BEFORE THAT DAY OR SINCE?
12:59PM 18 A. NO.
12:59PM 19 Q. THAT WAS THE ONE AND ONLY INTERACTION?
12:59PM 20 A. YES.
12:59PM 21 MR. SCHENK: YOUR HONOR, PERMISSION TO PUBLISH
12:59PM 22 5387H. IT HAS BEEN PREVIOUSLY ADMITTED.
12:59PM 23 THE COURT: YES.
01:00PM 24 BY MR. SCHENK:
01:00PM 25 Q. DR. DHAWAN, I'M GOING TO ASK YOU SOME QUESTIONS ABOUT SOME

01:00PM 1 TEXT MESSAGES.

01:00PM 2 YOU'RE NOT ON THESE TEXT MESSAGES, BUT THE FIRST ONE I

01:00PM 3 WOULD LIKE TO FOCUS YOUR ATTENTION ON IS ON PAGE 61.

01:00PM 4 DO YOU SEE THAT?

01:00PM 5 A. YES.

01:00PM 6 Q. THIS EXCHANGE IS DATED APRIL 28TH, 2015.

01:00PM 7 DO YOU SEE THAT?

01:00PM 8 A. YES.

01:00PM 9 Q. WERE YOU THERANOS'S LAB DIRECTOR AT THE TIME?

01:00PM 10 A. YES.

01:00PM 11 Q. DO YOU SEE MR. BALWANI WRITING, "IT IS MOST MADDENING

01:00PM 12 THERE IS NO FOCUS IN ANY CHEMICAL TEAMS AND NO PRODUCT COMING

01:00PM 13 OUT."

01:00PM 14 AND THEN AT THE BOTTOM OF THIS SCREEN, "MOST DISAPPOINTING

01:00PM 15 HOW BAD THESE PEOPLE ARE."

01:00PM 16 DO YOU SEE THAT?

01:00PM 17 A. YES.

01:00PM 18 Q. AND WOULD YOU NOW TURN TO PAGE 82.

01:00PM 19 WE'RE NOW LOOKING AT SOME MESSAGES FROM MAY 13TH, 2015.

01:01PM 20 DO YOU SEE THAT?

01:01PM 21 A. YES.

01:01PM 22 Q. DR. DHAWAN, WERE YOU LAB DIRECTOR OF THERANOS AROUND

01:01PM 23 MAY 13TH OF 2015?

01:01PM 24 A. YES.

01:01PM 25 Q. DO YOU SEE AT THE VERY TOP WHERE MR. BALWANI WRITES,

01:01PM 1 "SECONDLY. WE NEED A BETTER STRATEGY FOR NORMANDY. FOR A LONG
01:01PM 2 TIME" -- I'M SORRY. "FOR A LONG TIME TO COME WE WILL HAVE
01:01PM 3 HYBRID SOLUTIONS."

01:01PM 4 DO YOU SEE THAT?

01:01PM 5 A. YES.

01:01PM 6 Q. AND ARE YOU FAMILIAR WITH THE TERM "NORMANDY"?

01:01PM 7 A. I AM NOT.

01:01PM 8 Q. YOU DON'T KNOW WHAT "NORMANDY" MEANS?

01:01PM 9 A. NOT IN THIS CONTEXT.

01:01PM 10 Q. IF YOU'LL NOW TURN TO PAGE 84.

01:01PM 11 AT THE VERY TOP OF PAGE 84, DO YOU SEE A MESSAGE FROM
01:01PM 12 MR. BALWANI ON MAY 14TH, 2015?

01:01PM 13 A. YES.

01:01PM 14 Q. AND WERE YOU LAB DIRECTOR ON THAT DATE?

01:01PM 15 A. YES.

01:01PM 16 Q. AND DID YOU SEE MR. BALWANI WRITING, "AT NEWARK DOING
01:02PM 17 REVIEWS AND TERMINATIONS"?

01:02PM 18 A. YES.

01:02PM 19 Q. AND DID WE LOOK AT A SLIDE A MOMENT AGO THAT SAID NEWARK
01:02PM 20 WAS THE LOCATION OF THERANOS'S CLIA LAB?

01:02PM 21 A. YES.

01:02PM 22 Q. DID YOU KNOW WHO WAS -- WHEN YOU WERE LAB DIRECTOR, DID
01:02PM 23 YOU KNOW WHO WAS MAKING THE HIRING AND FIRING DECISIONS IN THE
01:02PM 24 LAB?

01:02PM 25 A. NOT DIRECTLY.

01:02PM 1 Q. YOU DID NOT KNOW?

01:02PM 2 A. NO.

01:02PM 3 Q. WOULD YOU NOW TURN TO PAGE 85.

01:02PM 4 A. YES.

01:02PM 5 Q. ANOTHER MESSAGE FROM MAY 14TH, 2015. DO YOU SEE WHERE

01:02PM 6 MR. BALWANI WRITES, "OUR PROBLEM HERE IS LACK OF MANAGEMENT NOT

01:02PM 7 PEOPLE."

01:02PM 8 DO YOU SEE THAT?

01:02PM 9 A. YES.

01:02PM 10 Q. AND DID YOU SHARE THAT OPINION WHEN YOU WERE LAB DIRECTOR?

01:02PM 11 DID YOU THINK THAT THERE WAS A PROBLEM IN NEWARK THAT INVOLVED

01:02PM 12 MANAGEMENT OF THE LAB?

01:02PM 13 A. I WAS NEVER GIVEN THE INFORMATION TO MAKE THAT OPINION.

01:02PM 14 Q. WOULD YOU NOW TURN TO PAGE 87.

01:03PM 15 DO YOU SEE MESSAGES ON PAGE 87 FROM JUNE 3RD, 2015?

01:03PM 16 A. UH-HUH.

01:03PM 17 Q. I'M SORRY. WAS THAT A YES?

01:03PM 18 A. YES. I'M SORRY, YES.

01:03PM 19 Q. AND WERE YOU LAB DIRECTOR AT THAT TIME, JUNE 2015?

01:03PM 20 A. YES.

01:03PM 21 Q. AND DO YOU SEE THE THIRD MESSAGE DOWN FROM MR. BALWANI

01:03PM 22 READS, "I DEAL WITH CLIA EVERY DAY AND I HATE THE LOW QUALITY

01:03PM 23 OF PEOPLE IN LAB INCLUDING WHAT YOU SAW YESTERDAY IN MAYO CEO."

01:03PM 24 DO YOU SEE THAT?

01:03PM 25 A. YES.

01:03PM 1 Q. AND IN JUNE, DID YOU DEAL WITH THE FOLKS THAT WORKED IN
01:03PM 2 CLIA AND AT THE THERANOS LAB IN NEWARK?

01:03PM 3 A. NO.

01:03PM 4 Q. WOULD YOU NOW TURN TO PAGE 103.

01:03PM 5 AT THE BOTTOM OF PAGE 103, DO YOU SEE SOME MESSAGES
01:03PM 6 EXCHANGED ON SEPTEMBER 1ST, 2015?

01:04PM 7 A. YES.

01:04PM 8 Q. WERE YOU LAB DIRECTOR ON SEPTEMBER 1ST, 2015?

01:04PM 9 A. YES.

01:04PM 10 Q. DO YOU SEE WHERE MR. BALWANI WRITES, "WE NEED TO CHANGE
01:04PM 11 DOT COM PROVIDER SECTION. IT TALKS ABOUT MICRO SAMPLES AND
01:04PM 12 REFLECT TESTING ON MICRO SAMPLES."

01:04PM 13 AND THEN ABOUT THREE LINES DOWN, "JUST SAYING IT IS A
01:04PM 14 DISASTER."

01:04PM 15 DO YOU SEE THAT?

01:04PM 16 A. YES.

01:04PM 17 Q. AND, DR. DHAWAN, DO YOU KNOW WHAT THE THERANOS WEBSITE
01:04PM 18 SAID REGARDING THE WAY BLOOD WAS DRAWN, WHETHER IT WAS
01:04PM 19 FINGERSTICK OR VENOUS? DID YOU LOOK INTO THAT?

01:04PM 20 A. I DID NOT.

01:04PM 21 Q. WOULD YOU TURN NOW TO PAGE 111.

01:04PM 22 DO YOU SEE SOME MESSAGES ON THIS PAGE ON SEPTEMBER 22ND,
01:05PM 23 2015?

01:05PM 24 A. YES.

01:05PM 25 Q. AND I THINK WE TALKED ABOUT THIS, BUT FIRST, WERE YOU LAB

01:05PM 1 DIRECTOR ON SEPTEMBER 22ND?

01:05PM 2 A. YES.

01:05PM 3 Q. AND WAS THIS ALSO DURING THE CMS INSPECTION?

01:05PM 4 A. YES.

01:05PM 5 Q. MR. BALWANI WRITES, "VERY HOSTILE SO FAR. THEY HAVE

01:05PM 6 COMPLAINTS."

01:05PM 7 AND THEN A FEW MESSAGES DOWN DO YOU SEE WHERE MS. HOLMES

01:05PM 8 WRITES, "PRAYING LITERALLY NONSTOP"?

01:05PM 9 A. YES.

01:05PM 10 Q. DR. DHAWAN, DID YOU KNOW THAT CMS -- OR DID YOU SHARE THIS

01:05PM 11 OPINION THAT THEY WERE VERY HOSTILE AND THEY HAVE COMPLAINTS?

01:05PM 12 A. I DIDN'T HEAR ANYTHING TO THAT EFFECT WHEN I WAS THERE.

01:05PM 13 Q. AND HOW ABOUT THIS COMMENT ABOUT PRAYING? WAS THAT YOUR

01:05PM 14 EXPERIENCE DURING THE CMS INSPECTION, THAT YOU FELT A NEED TO

01:05PM 15 PRAY IT WAS GOING SO POORLY?

01:05PM 16 A. I DIDN'T FEEL THAT NEED.

01:05PM 17 Q. WOULD YOU NOW TURN TO THE NEXT PAGE, PAGE 112.

01:06PM 18 DO YOU SEE AT THE TOP ALSO ON SEPTEMBER 22ND WHERE

01:06PM 19 MR. BALWANI WRITES, "OUR VALIDATION REPORTS ARE TERRIBLE.

01:06PM 20 REALLY PAINFUL GOING THRU THIS PROCESS. SAME ISSUES FDA

01:06PM 21 POINTED OUT."

01:06PM 22 WE TALKED ABOUT A TIME WHEN YOU WENT TO VISIT THERANOS, DO

01:06PM 23 YOU RECALL, ON SEPTEMBER 19TH?

01:06PM 24 A. YES.

01:06PM 25 Q. SO A FEW DAYS BEFORE THIS, WERE YOU BEING ASKED TO SIGN

01:06PM 1 VALIDATION REPORTS THAT DAY?

01:06PM 2 A. COSIGN THEM, YES.

01:06PM 3 Q. AND WHEN MR. BALWANI -- I THINK YOU SAID HE PUT THEM IN

01:06PM 4 FRONT OF YOU AND ASKED YOU TO SIGN THEM. DID HE TELL YOU THEY

01:06PM 5 WERE TERRIBLE?

01:06PM 6 A. NO.

01:06PM 7 Q. IF YOU WOULD NOW LOOK A LITTLE BIT FURTHER DOWN, WE'VE

01:06PM 8 MOVED INTO SEPTEMBER 23RD. WE'RE STILL ON THE SAME PAGE,

01:06PM 9 PAGE 112.

01:06PM 10 DO YOU SEE MS. HOLMES WRITING, "WILL MAKE SURE ALL TEAMS

01:06PM 11 ARE REVIEWING REPORTS. LET ME KNOW ANYTHING ELSE CAN DO TO

01:06PM 12 SUPPORT."

01:06PM 13 AND THEN MR. BALWANI RESPONDS, "GOING BAD SO FAR. PRAY.

01:07PM 14 "DANIEL HAS NOTHING READY.

01:07PM 15 "TOLD ME EVERYTHING IS IN THE BINDERS.

01:07PM 16 "NOT THERE.

01:07PM 17 "PRAYING."

01:07PM 18 DO YOU SEE THAT?

01:07PM 19 A. YES.

01:07PM 20 Q. AND THEN I'M JUST GOING TO ASK YOU ABOUT ONE FINAL

01:07PM 21 MESSAGE, PAGE 113.

01:07PM 22 DO YOU SEE MS. HOLMES WRITES, "PRAYING CONTINUALLY"?

01:07PM 23 A. YES.

01:07PM 24 Q. AFTER THE INSPECTION COMPLETED, SO A DAY OR TWO AFTER YOU

01:07PM 25 WERE THERE THAT MORNING --

01:07PM 1 A. YES.

01:07PM 2 Q. -- SEPTEMBER 22ND, WHAT WAS YOUR IMPRESSION OF HOW THE

01:07PM 3 INSPECTION WENT? DID YOU HAVE AN IMPRESSION? AND IF SO, WHAT

01:07PM 4 WAS IT?

01:07PM 5 A. I COULDN'T HAVE GENERATED AN IMPRESSION. I WAS NOT THERE

01:07PM 6 LONG ENOUGH, AND I WAS NOT AS DIRECTLY INVOLVED.

01:07PM 7 Q. DID MR. BALWANI CALL YOU, OR ANYONE FROM THERANOS CALL

01:07PM 8 YOU, AFTER THE INSPECTION TO LET YOU KNOW HOW IT WENT?

01:07PM 9 A. I DON'T RECALL ANY CALLS TO ME.

01:07PM 10 Q. I'D LIKE TO NOW ASK YOU TO LOOK AT 2548.

01:08PM 11 DO YOU SEE THIS TWO-PAGE EXHIBIT AT 2548?

01:08PM 12 A. YES.

01:08PM 13 Q. IS THIS AN EMAIL EXCHANGE THAT INCLUDES AN EMAIL FROM

01:08PM 14 SOMEONE OUTSIDE OF THERANOS, AND THEN YOU FORWARD THAT TO

01:08PM 15 MR. BALWANI AND HAVE A DIALOGUE WITH HIM?

01:08PM 16 A. YES.

01:08PM 17 Q. AND, DR. DHAWAN, WHEN YOU WERE WORKING AT THERANOS, WAS

01:08PM 18 EMAIL THE WAY YOU COMMUNICATED WITH MR. BALWANI ABOUT WORK

01:08PM 19 MATTERS?

01:08PM 20 A. YES, AND I WOULD OCCASIONALLY CALL ON THE CELL.

01:08PM 21 Q. IF YOU HAD A QUESTION ABOUT HOW TO HANDLE SOMETHING, WOULD

01:08PM 22 YOU USE EMAIL FROM TIME TO TIME TO COMMUNICATE WITH

01:08PM 23 MR. BALWANI?

01:08PM 24 A. YES.

01:08PM 25 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 2548.

01:08PM 1 MS. WALSH: NO OBJECTION.

01:09PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:09PM 3 (GOVERNMENT'S EXHIBIT 2548 WAS RECEIVED IN EVIDENCE.)

01:09PM 4 MR. SCHENK: THANK YOU.

01:09PM 5 Q. IF WE COULD START AT THE VERY BOTTOM OF THAT FIRST PAGE.

01:09PM 6 DO YOU SEE AN EMAIL FROM SOMEONE NAMED DAVID CROWE?

01:09PM 7 A. YES.

01:09PM 8 Q. AND HIS EMAIL ADDRESS ENDS AT FT.COM.

01:09PM 9 DO YOU KNOW WHAT THAT IS?

01:09PM 10 A. I LEARNED LATER IT WAS "THE FINANCIAL TIMES."

01:09PM 11 Q. SO WAS A REPORTER REACHING OUT TO YOU?

01:09PM 12 A. YES.

01:09PM 13 Q. AND THE REPORTER REACHES OUT TO YOU IN OCTOBER OF 2015; IS

01:09PM 14 THAT RIGHT?

01:09PM 15 A. YES.

01:09PM 16 Q. AND IN OCTOBER -- SO THIS IS THE NEXT MONTH, A MONTH AFTER

01:09PM 17 THE INSPECTION?

01:09PM 18 A. YES.

01:09PM 19 Q. HE SAYS, "AS A MATTER OF URGENCY, OUR CONVERSATION WILL BE

01:09PM 20 ON A BACKGROUND BASIS."

01:09PM 21 DO YOU SEE THAT?

01:09PM 22 A. YES.

01:09PM 23 Q. AND THEN YOU FORWARD THIS TO MR. BALWANI, AND YOU LET HIM

01:09PM 24 KNOW THAT YOU TALKED TO THE REPORTER SUPERFICIALLY; IS THAT

01:09PM 25 RIGHT?

01:09PM 1 A. YES, UH-HUH.

01:09PM 2 Q. AND YOU TOLD THE REPORTER TO CONTACT MR. BALWANI?

01:09PM 3 A. YES.

01:09PM 4 Q. AND THEN DO YOU SEE THE RESPONSE FROM MR. BALWANI AT THE

01:09PM 5 VERY TOP?

01:09PM 6 A. YES.

01:09PM 7 Q. DOES MR. BALWANI SAY, "THANKS. WILL SPEAK IN THE A.M.

01:10PM 8 THANKS FOR THE HELP AND STICKING BY. APPRECIATE IT."

01:10PM 9 DO YOU SEE WHERE HE WROTE "STICKING BY"?

01:10PM 10 A. YES.

01:10PM 11 Q. DO YOU KNOW WHAT HE MEANT BY THAT, OR WHAT DID THAT MEAN

01:10PM 12 TO YOU?

01:10PM 13 A. I'M NOT SURE WHAT THAT MEANT.

01:10PM 14 Q. THE NEXT PARAGRAPH, "IN FUTURE, JUST DON'T ANSWER ANY

01:10PM 15 QUESTIONS AS THEY WILL TRAP YOU OR MISQUOTE YOU. WE ARE TRYING

01:10PM 16 TO GET ON TOP OF THE SITUATION AND RELEASE OUR STATEMENTS TO

01:10PM 17 REFUTE THE FALSEHOODS, BUT THIS STUFF TAKES TIME."

01:10PM 18 DO YOU SEE THAT?

01:10PM 19 A. YES.

01:10PM 20 Q. WHAT ABOUT THE REFERENCE TO "ON TOP OF THE SITUATION"?

01:10PM 21 DID THAT MEAN ANYTHING TO YOU?

01:10PM 22 A. AT THAT TIME, NO.

01:10PM 23 Q. WOULD YOU NOW TURN TO EXHIBIT 2972.

01:10PM 24 DR. DHAWAN, IS 2972 AN EMAIL FROM DANIEL YOUNG TO YOU IN

01:11PM 25 NOVEMBER OF 2015?

01:11PM 1 A. YES.

01:11PM 2 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 2972.

01:11PM 3 MS. WALSH: OBJECTION. 407.

01:11PM 4 THE COURT: MR. SCHENK.

01:11PM 5 MR. SCHENK: YOUR HONOR, REVIEWING QC DATA IS NOT A

01:11PM 6 REMEDIAL MEASURE. THAT'S SOMETHING THAT WE HAVE HEARD

01:11PM 7 TESTIMONY ABOUT THAT LAB DIRECTORS DO.

01:11PM 8 THE COURT: THE OBJECTION IS OVERRULED. THIS WILL

01:11PM 9 BE ADMITTED AND IT MAY BE PUBLISHED.

01:11PM 10 MR. SCHENK: THANK YOU.

01:11PM 11 (GOVERNMENT'S EXHIBIT 2972 WAS RECEIVED IN EVIDENCE.)

01:11PM 12 BY MR. SCHENK:

01:11PM 13 Q. DR. DHAWAN, DO YOU SEE THIS EMAIL FROM SOMEONE NAMED

01:11PM 14 DANIEL YOUNG AT THE BEGINNING OF NOVEMBER 2015?

01:11PM 15 A. YES.

01:11PM 16 Q. AND DID YOU KNOW DANIEL YOUNG? DID THAT NAME SOUND

01:11PM 17 FAMILIAR BEFORE NOVEMBER?

01:11PM 18 A. I HAD MET HIM ONCE.

01:11PM 19 Q. AND DO YOU REMEMBER WHEN THAT WAS? WAS IT CMS INSPECTION

01:12PM 20 OR A TOUR?

01:12PM 21 A. I BELIEVE IT WAS AT THE CMS INSPECTION.

01:12PM 22 Q. IN THIS EMAIL HE SAYS THAT HE'S GOING TO SCHEDULE A

01:12PM 23 MEETING TO REVIEW MONTHLY QC DATA FOR THESE TWO MONTHS,

01:12PM 24 SEPTEMBER AND OCTOBER.

01:12PM 25 A. YES, YES.

01:12PM 1 Q. AND WHAT I'M WONDERING, IS THAT SOMETHING THAT YOU HAD
01:12PM 2 DONE BEFORE? YOU WERE THERANOS LAB DIRECTOR FOR ABOUT A YEAR
01:12PM 3 NOW. THIS IS NOVEMBER 2015, AND I THINK WE SAW YOU STARTED IN
01:12PM 4 NOVEMBER OF 2014.

01:12PM 5 A. YES.

01:12PM 6 Q. HAD YOU REVIEWED QC DATA AT ALL IN THAT YEAR?

01:12PM 7 A. I WAS NEVER SENT ANY QC DATA TO REVIEW.

01:12PM 8 Q. I'M SORRY?

01:12PM 9 A. I WAS NEVER SENT ANY QC DATA TO REVIEW.

01:12PM 10 Q. SO WHEN DANIEL YOUNG REACHES OUT TO YOU, THIS IS THE FIRST
01:12PM 11 TIME THAT SOMEONE SEEMED TO BE PRESENTING YOU WITH QC DATA?

01:12PM 12 A. YES.

01:12PM 13 Q. AND THERE'S REFERENCE TO SCHEDULING A MEETING. I'M
01:12PM 14 WONDERING IF EVEN THIS MEETING EVER HAPPENED? DO YOU HAVE A
01:12PM 15 RECOLLECTION OF THAT?

01:12PM 16 A. I DON'T RECALL THIS MEETING EVER HAPPENING.

01:12PM 17 Q. AFTER THIS TIME, NOVEMBER OF 2015, DID THERE COME A POINT
01:13PM 18 IN TIME WHEN YOU STOPPED BEING THE THERANOS LAB DIRECTOR?

01:13PM 19 A. THERE WAS NO DEFINITE DATE GIVEN TO ME. I JUST --
01:13PM 20 PEOPLE -- I DID NOT HEAR BACK FROM THEM.

01:13PM 21 Q. SO JUST AT SOME POINT YOU NO LONGER HEARD?

01:13PM 22 A. YES.

01:13PM 23 Q. BUT YOU DON'T HAVE AN END DATE IN YOUR MIND WHEN YOU WERE
01:13PM 24 NO LONGER THE LAB DIRECTOR?

01:13PM 25 A. MY RECOLLECTION IS THAT THEY HIRED SOMEONE ELSE ON A

01:13PM 1 FULL-TIME BASIS, BECAUSE I WAS VERY PART-TIME WORK. I WAS
01:13PM 2 SUPPOSED TO BE A CONSULTANT.

01:13PM 3 AND I BELIEVE THAT THAT WAS AROUND THIS TIME, BUT I DON'T
01:13PM 4 HAVE AN EXACT DATE.

01:13PM 5 Q. OKAY. DO YOU REMEMBER HOW YOU FOUND OUT THAT A NEW LAB
01:13PM 6 DIRECTOR WAS HIRED?

01:13PM 7 A. I DON'T RECALL HOW I FOUND OUT, BUT IT WASN'T DIRECTLY
01:13PM 8 FROM THEM.

01:13PM 9 Q. DID THERE COME A POINT IN TIME WHEN YOU -- WHEN YOUR
01:13PM 10 OPINION OF HOW THE CMS INSPECTION WENT, WHEN THAT CHANGED? WAS
01:13PM 11 THERE A POINT IN TIME WHEN YOU THOUGHT YOUR IMPRESSION ON
01:14PM 12 SEPTEMBER 22ND MIGHT NOT BE ACCURATE, MAYBE IT WAS DIFFERENT?

01:14PM 13 A. WHEN THE NOTIFICATION FROM CMS CAME.

01:14PM 14 Q. OKAY. AND WAS THAT IN JULY OF 2016?

01:14PM 15 A. IT WAS SEVERAL -- SIX TO EIGHT MONTHS LATER, YES.

01:14PM 16 Q. WOULD IT HELP YOU IF I SHOWED YOU A DOCUMENT TO REFRESH
01:14PM 17 YOUR RECOLLECTION?

01:14PM 18 A. YES, YES.

01:14PM 19 Q. AND WOULD YOU TURN TO 3217?

01:14PM 20 A. YES.

01:14PM 21 Q. SO A MOMENT AGO YOU SAID YOU RECEIVED SOME NOTIFICATION.

01:14PM 22 A. YES.

01:14PM 23 Q. IS THIS -- DOES THIS REFRESH YOUR RECOLLECTION --

01:14PM 24 A. YES.

01:14PM 25 Q. -- I'M SORRY, THAT IN JULY OF 2015 YOU LEARNED ADDITIONAL

01:14PM 1 INFORMATION ABOUT HOW THE CMS INSPECTION WENT?

01:14PM 2 A. YES.

01:14PM 3 Q. HOW ABOUT IN CONVERSATIONS WITH MR. BALWANI? WAS THERE

01:14PM 4 EVER A TIME WHEN MR. BALWANI TOLD YOU ABOUT THE RESULTS OF THE

01:14PM 5 CMS INSPECTION?

01:14PM 6 A. NO.

01:14PM 7 Q. NOT IN THE IMMEDIATE DAYS AFTERWARDS, AND NOT EVEN YEARS

01:15PM 8 AFTERWARDS; IS THAT RIGHT?

01:15PM 9 A. I DON'T RECALL ANY CONVERSATIONS LIKE THAT.

01:15PM 10 Q. YOU TOLD THE JURY EARLIER THAT DURING THAT EIGHT MONTH

01:15PM 11 PERIOD OF TIME THAT I ASKED YOU TO FOCUS ON, NOVEMBER OF '14

01:15PM 12 WHEN YOU STARTED THROUGH ABOUT JULY OF '15, YOU WORKED A FEW

01:15PM 13 HOURS, I THINK.

01:15PM 14 A. YES.

01:15PM 15 Q. A SMALL AMOUNT OF TIME?

01:15PM 16 A. YES.

01:15PM 17 Q. DOES THAT ESTIMATE CHANGE IF NOW WE ADD IN THE ADDITIONAL

01:15PM 18 TIME THAT YOU SERVED AS LAB DIRECTOR? SO NOW FROM JULY OF '15

01:15PM 19 ON UNTIL THIS DATE THAT YOU'RE UNCERTAIN OF WHEN A NEW LAB

01:15PM 20 DIRECTOR WAS HIRED. DID THE NUMBER OF HOURS THAT YOU EVER

01:15PM 21 WORKED CHANGE SIGNIFICANTLY?

01:15PM 22 A. IT WAS VERY LIMITED.

01:15PM 23 Q. AND THAT WAS TRUE EVEN AFTER JULY OF '15; IS THAT RIGHT?

01:15PM 24 A. YES.

01:15PM 25 MR. SCHENK: YOUR HONOR, MAY I HAVE A MOMENT?

01:15PM 1 THE COURT: YES.

01:15PM 2 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

01:16PM 3 MR. SCHENK: THANK YOU, YOUR HONOR.

01:16PM 4 NO FURTHER QUESTIONS.

01:16PM 5 THE COURT: CROSS-EXAMINATION?

01:16PM 6 MS. WALSH: YES, YOUR HONOR.

01:16PM 7 MAY I HAVE A MOMENT, YOUR HONOR?

01:16PM 8 THE COURT: YES.

01:16PM 9 MS. WALSH: JUST GETTING SOME BINDERS. AH.

01:17PM 10 MAY I APPROACH THE WITNESS, YOUR HONOR?

01:17PM 11 THE COURT: PLEASE.

01:17PM 12 MS. WALSH: (HANDING.)

01:17PM 13 MAY I REMOVE MY MASK?

01:17PM 14 THE COURT: YES.

01:17PM 15 MS. WALSH: THANK YOU.

01:17PM 16 **CROSS-EXAMINATION**

01:17PM 17 BY MS. WALSH:

01:17PM 18 Q. ALL RIGHT. GOOD AFTERNOON, DR. DHAWAN. MY NAME IS

01:17PM 19 AMY WALSH AND I REPRESENT MR. BALWANI.

01:17PM 20 A. HELLO.

01:17PM 21 Q. I'M GOING TO ASK YOU SOME QUESTIONS ABOUT YOUR TESTIMONY

01:17PM 22 ON DIRECT TODAY.

01:17PM 23 A. YES.

01:17PM 24 Q. OKAY. SO LET'S START WITH YOUR BACKGROUND. YOU ARE A

01:17PM 25 MEDICAL DOCTOR; CORRECT?

01:17PM 1 A. YES.

01:17PM 2 Q. AND YOU WENT UNDERGRADUATE AT SAN FRANCISCO STATE

01:17PM 3 UNIVERSITY; RIGHT?

01:17PM 4 A. YES.

01:17PM 5 Q. YOU GOT A BACHELOR'S IN CHEMISTRY?

01:17PM 6 A. YES.

01:17PM 7 Q. AND YOU GRADUATED SUMMA CUM LAUDE; CORRECT?

01:17PM 8 A. YES.

01:17PM 9 Q. AND YOU WERE ON THE DEAN'S LIST FOR ALL FOUR YEARS THERE?

01:18PM 10 A. YES.

01:18PM 11 Q. AND THEN YOU WENT TO THE MEDICAL SCHOOL AT THE UNIVERSITY

01:18PM 12 OF SOUTHERN CALIFORNIA; IS THAT RIGHT?

01:18PM 13 A. YES.

01:18PM 14 Q. AND THEN FOLLOWING MEDICAL SCHOOL, YOU DID TWO DIFFERENT

01:18PM 15 RESIDENCIES; IS THAT RIGHT?

01:18PM 16 A. YES.

01:18PM 17 Q. ONE WAS INTERNAL MEDICINE; CORRECT?

01:18PM 18 A. YES.

01:18PM 19 Q. AND THEN A RESIDENCY IN DERMATOLOGY; RIGHT?

01:18PM 20 A. YES.

01:18PM 21 Q. OKAY. AND YOU ULTIMATELY BECAME THE CHIEF RESIDENT IN

01:18PM 22 DERMATOLOGY; RIGHT?

01:18PM 23 A. YES.

01:18PM 24 Q. FOLLOWING THAT, YOU WERE AN ATTENDING PHYSICIAN AT

01:18PM 25 MOUNT SINAI MEDICAL CENTER; IS THAT RIGHT?

01:18PM 1 A. NOT MOUNT SINAI. IT WAS MOUNT ZION.

01:18PM 2 Q. MOUNT ZION, OKAY.

01:18PM 3 A. YES.

01:18PM 4 Q. AND THAT WAS IN THE DEPARTMENT OF INTERNAL MEDICINE AND

01:18PM 5 EMERGENCY MEDICINE; IS THAT RIGHT?

01:18PM 6 A. YES, YES.

01:18PM 7 Q. AND YOU'RE ALSO, AND YOU WERE AT THE TIME, A PROFESSOR AT

01:18PM 8 STANFORD UNIVERSITY MEDICAL SCHOOL; IS THAT RIGHT?

01:18PM 9 A. I'M AN ADJUNCT CLINICAL ASSISTANT PROFESSOR, YES.

01:18PM 10 Q. OKAY. AND OF COURSE YOU'RE LICENSED TO PRACTICE MEDICINE

01:19PM 11 IN THE STATE OF CALIFORNIA; RIGHT?

01:19PM 12 A. YES.

01:19PM 13 Q. AND YOU'RE CERTIFIED BY THE MEDICAL BOARD OF DERMATOLOGY;

01:19PM 14 RIGHT?

01:19PM 15 A. YES.

01:19PM 16 Q. AND THE MEDICAL BOARD OF CALIFORNIA?

01:19PM 17 A. YES.

01:19PM 18 Q. OKAY. AND YOU -- I THINK YOU SAID THIS ON DIRECT, YOU'VE

01:19PM 19 PRACTICED MEDICINE FOR 32 YEARS; IS THAT RIGHT?

01:19PM 20 A. YES.

01:19PM 21 Q. AND YOU HAVE 18 YEARS OF CLINICAL RESEARCH EXPERIENCE;

01:19PM 22 CORRECT?

01:19PM 23 A. YES. NINETEEN NOW.

01:19PM 24 Q. NINETEEN NOW.

01:19PM 25 OKAY. AND YOU HAVE YOUR OWN MEDICAL PRACTICE; RIGHT?

01:19PM 1 A. I'M PART OF A GROUP.

01:19PM 2 Q. OKAY. SO YOU'RE PART OF A GROUP?

01:19PM 3 A. YES.

01:19PM 4 Q. AND THAT GROUP IS THE CALIFORNIA CENTER FOR DERMATOLOGY?

01:19PM 5 A. IT'S THE CENTER FOR DERMATOLOGY, YES.

01:19PM 6 Q. CENTER FOR DERMATOLOGY?

01:19PM 7 A. YES.

01:19PM 8 Q. AND IN ADDITION, YOU WERE A LAB DIRECTOR FOR YOUR OWN LAB;

01:19PM 9 RIGHT?

01:19PM 10 A. YES.

01:19PM 11 Q. AND THAT LAB WAS EAST BAY DERMATOLOGY MEDICAL GROUP;

01:20PM 12 CORRECT?

01:20PM 13 A. YES, YES.

01:20PM 14 Q. AND, OF COURSE, YOU WERE LISTED AS THE LAB DIRECTOR ON THE

01:20PM 15 CLIA LICENSE FOR THAT LAB?

01:20PM 16 A. YES.

01:20PM 17 Q. AND EAST BAY, THAT LAB, EAST BAY --

01:20PM 18 A. YES.

01:20PM 19 Q. -- THAT WAS A HIGH COMPLEXITY LAB; IS THAT RIGHT?

01:20PM 20 A. YES.

01:20PM 21 Q. OKAY. AND I THINK YOU SAID THIS ON DIRECT, IT SPECIALIZED

01:20PM 22 IN HISTOPATHOLOGY; CORRECT?

01:20PM 23 A. YES, AMONG OTHER THINGS, YES.

01:20PM 24 Q. AND HISTOPATHOLOGY INVOLVES EXAMINING CELLS UNDER A

01:20PM 25 MICROSCOPE; RIGHT?

01:20PM 1 A. YES.

01:20PM 2 Q. AND THE PURPOSE IS TO DIAGNOSE DISEASES; RIGHT?

01:20PM 3 A. YES.

01:20PM 4 Q. AND INCLUDING CANCER AND SKIN DISEASES; CORRECT?

01:20PM 5 A. YES.

01:20PM 6 Q. OKAY. SO LET'S TAKE A LOOK AT 2219, WHICH I THINK IS IN

01:20PM 7 EVIDENCE.

01:21PM 8 ACTUALLY -- NO. OKAY. 2219 IN YOUR BINDER, DR. DHAWAN.

01:21PM 9 A. YES.

01:21PM 10 THE CLERK: MS. WALSH, IT IS.

01:21PM 11 MS. WALSH: OKAY. YOUR HONOR, THIS EXHIBIT IS IN

01:21PM 12 EVIDENCE. MAY IT BE PUBLISHED?

01:21PM 13 THE COURT: YES.

01:21PM 14 BY MS. WALSH:

01:21PM 15 Q. AND TURNING TO PAGE 2 TO 3 OF THAT EXHIBIT --

01:21PM 16 A. YES.

01:21PM 17 Q. -- THIS IS WHERE MR. BALWANI REACHES OUT TO YOU IN

01:21PM 18 NOVEMBER OF 2014; RIGHT?

01:21PM 19 A. YES.

01:21PM 20 Q. OKAY. AND HE SAYS, "SUNIL.

01:21PM 21 "THANKS FOR TAKING MY CALL.

01:21PM 22 "THE TIME COMMITMENT IS VERY MINIMAL. THIS WILL BE MOSTLY

01:21PM 23 AN ON CALL CONSULTING ROLE."

01:21PM 24 AND YOU TESTIFIED TO THAT; RIGHT?

01:21PM 25 A. YES.

01:21PM 1 Q. OKAY. "AND I AM EXTREMELY CONFIDENT THAT IT WON'T
01:21PM 2 INTERFERE WITH YOUR WORK OR WITH YOUR FAMILY LIFE. I AM
01:21PM 3 ATTACHING THE REQUIREMENTS HERE."

01:22PM 4 AND MR. BALWANI ATTACHES THE CLIA REQUIREMENTS?

01:22PM 5 A. YES.

01:22PM 6 Q. AND DO YOU SEE THOSE ON PAGE 3?

01:22PM 7 A. YES.

01:22PM 8 Q. AND THE CLIA REQUIREMENTS, IT SAYS FOR M.D.'S THERE ARE
01:22PM 9 THE FOLLOWING ALTERNATIVES.

01:22PM 10 NUMBER 2 SAYS, "LICENSED TO PRACTICE MEDICINE IN THE STATE
01:22PM 11 IN WHICH THE LABORATORY IS LOCATED AND EITHER HAVE AT LEAST ONE
01:22PM 12 YEAR OF LABORATORY TRAINING DURING MEDICAL RESIDENCY OR"
01:22PM 13 SKIPPING DOWN TO TWO, "HAVE AT LEAST 2 YEARS OF EXPERIENCE
01:22PM 14 DIRECTING OR SUPERVISING HIGH COMPLEXITY TESTING."

01:22PM 15 DO YOU SEE THAT?

01:22PM 16 A. YES.

01:22PM 17 Q. AND THAT IS SOMETHING THAT YOU HAD DONE WHEN MR. BALWANI
01:22PM 18 REACHED OUT TO YOU; RIGHT?

01:22PM 19 A. YES.

01:22PM 20 Q. AND SO YOU WERE FULLY QUALIFIED TO BE A LAB DIRECTOR FOR A
01:22PM 21 HIGH COMPLEXITY LAB; CORRECT?

01:22PM 22 A. YES.

01:22PM 23 Q. OKAY. AND YOU'RE AWARE THAT MR. BALWANI REACHED OUT TO
01:22PM 24 YOU BECAUSE HE WAS LOOKING FOR A LAB DIRECTOR TO REPLACE THE
01:23PM 25 PRIOR LAB DIRECTOR; RIGHT?

01:23PM 1 A. YES.

01:23PM 2 Q. AND THAT WAS DR. ADAM ROSENDORFF; RIGHT?

01:23PM 3 A. YES.

01:23PM 4 Q. AND DR. ROSENDORFF CAME OFF THE CLIA LICENSE IN AROUND

01:23PM 5 DECEMBER OF 2014.

01:23PM 6 DO YOU RECALL THAT?

01:23PM 7 A. I DON'T HAVE THE EXACT DATE, BUT --

01:23PM 8 Q. BUT WAS IT AROUND THAT TIME?

01:23PM 9 A. I WOULD HAVE TO LOOK AT THE PAPERWORK, BUT YEAH, I WOULD

01:23PM 10 ASSUME.

01:23PM 11 Q. SURE, SURE. SO LET'S -- IF YOU CAN IN YOUR BINDER,

01:23PM 12 DR. DHAWAN, TURN TO 10567. IT'S THE SECOND PAGE OF THAT

01:23PM 13 EXHIBIT.

01:23PM 14 A. YES.

01:23PM 15 Q. DOES THAT REFRESH YOUR RECOLLECTION AS TO WHEN

01:23PM 16 DR. ROSENDORFF CAME OFF THE THERANOS CLIA LICENSE?

01:23PM 17 A. YES.

01:23PM 18 Q. OKAY. AND THAT WAS DECEMBER 17TH, 2014?

01:23PM 19 A. YES.

01:23PM 20 Q. OKAY. AND IF WE CAN JUST PUT UP 2219 AGAIN ON PAGE 2.

01:24PM 21 MR. BALWANI DIDN'T JUST -- DR. DHAWAN, IF YOU COULD JUST

01:24PM 22 LOOK AT THE SCREEN AT 2219.

01:24PM 23 A. SURE. YES.

01:24PM 24 Q. WHEN MR. BALWANI CONTACTED YOU, HE WASN'T -- HE WAS

01:24PM 25 REACHING OUT TO YOU; RIGHT?

01:24PM 1 A. YES.

01:24PM 2 Q. BUT HE ALSO SAYS IN HIS EMAIL, "PLEASE LET ME KNOW IF YOU

01:24PM 3 WILL BE ABLE TO DO THIS OR PERHAPS SOMEONE ELSE YOU KNOW";

01:24PM 4 CORRECT?

01:24PM 5 A. YES.

01:24PM 6 Q. SO HE WAS LOOKING FOR A LAB DIRECTOR?

01:24PM 7 A. YES.

01:24PM 8 Q. OKAY. AND BEFORE MR. BALWANI EMAILED YOU, YOU WERE AWARE,

01:24PM 9 WEREN'T YOU, THAT HE WAS CONDUCTING A BROADER SEARCH FOR A NEW

01:24PM 10 LAB DIRECTOR?

01:24PM 11 MR. SCHENK: OBJECTION. SPECULATION.

01:24PM 12 THE WITNESS: I DID NOT KNOW THAT.

01:24PM 13 THE COURT: EXCUSE ME, SIR.

01:24PM 14 WHY DON'T YOU LAY A FOUNDATION A LITTLE BIT MORE.

01:25PM 15 MS. WALSH: SURE.

01:25PM 16 Q. SO, DR. DHAWAN, MR. BALWANI REACHED OUT TO YOU TO SEE IF

01:25PM 17 YOU KNEW OF ANYONE ELSE WHO COULD BE A LAB DIRECTOR BESIDES

01:25PM 18 YOU; RIGHT?

01:25PM 19 A. YES.

01:25PM 20 Q. THAT'S IN THE EMAIL; RIGHT?

01:25PM 21 A. YES.

01:25PM 22 Q. AND WERE YOU AWARE THAT HE WAS LOOKING FOR OTHER PEOPLE TO

01:25PM 23 BECOME A LAB DIRECTOR? JUST WERE YOU AWARE?

01:25PM 24 MR. SCHENK: OBJECTION. LEADING.

01:25PM 25 THE COURT: SUSTAINED.

01:25PM 1 BY MS. WALSH:

01:25PM 2 Q. OKAY. DID YOU HAVE ANY MORE CONVERSATIONS WITH

01:25PM 3 MR. BALWANI ABOUT SEARCHES FOR A LAB DIRECTOR?

01:25PM 4 A. I DON'T RECALL ANY CONVERSATIONS WHERE I WAS TOLD THAT

01:25PM 5 THERE WAS A SEARCH GOING ON SUCH AS, YOU KNOW, WHEN PEOPLE

01:25PM 6 SEARCH FOR A POSITION, NO.

01:25PM 7 Q. OKAY. AND DID YOU HAVE ANY CONVERSATIONS WITH OTHER

01:25PM 8 EMPLOYEES OF THERANOS ABOUT THE FACT THAT THEY WERE LOOKING FOR

01:25PM 9 A LAB DIRECTOR?

01:25PM 10 A. I DID NOT.

01:25PM 11 Q. OKAY. NOW, YOU TESTIFIED ON DIRECT THAT YOU TOOK A COUPLE

01:26PM 12 OF TOURS OF THERANOS DURING THAT TIME PERIOD NOVEMBER 2014

01:26PM 13 THROUGH JUNE 2015?

01:26PM 14 DO YOU REMEMBER THAT TESTIMONY?

01:26PM 15 A. YES.

01:26PM 16 Q. OKAY. AND MR. BALWANI WAS ONE OF THE PEOPLE WHO TOOK YOU

01:26PM 17 ON THAT TOUR; RIGHT?

01:26PM 18 A. YES.

01:26PM 19 Q. OKAY. AND I THINK YOU SAID THAT THERE WERE OTHER THERANOS

01:26PM 20 LAB PEOPLE WHO WERE ON THAT TOUR; RIGHT?

01:26PM 21 A. YES.

01:26PM 22 Q. AND THAT WAS AT THE NEWARK LAB; CORRECT?

01:26PM 23 A. YES.

01:26PM 24 Q. AND YOU GOT SHOWN AROUND DURING THE COURSE OF THE TOUR;

01:26PM 25 RIGHT?

01:26PM 1 A. YES.

01:26PM 2 Q. AND AS YOU SAID, YOU MET OTHER THERANOS PERSONNEL; RIGHT?

01:26PM 3 A. YES.

01:26PM 4 Q. AND DO YOU REMEMBER MEETING A FELLOW NAMED MAX FOSQUE?

01:26PM 5 A. I DON'T RECALL THAT NAME.

01:26PM 6 Q. OKAY. HOW ABOUT GURBIR SIDHU?

01:27PM 7 A. I DON'T RECALL THAT NAME SPECIFICALLY, NO.

01:27PM 8 Q. OKAY. AND I'M GOING TO JUST GO THROUGH A COUPLE MORE

01:27PM 9 NAMES TO SEE IF IT JOGS YOUR RECOLLECTION, OKAY?

01:27PM 10 MEREYDA BUENROSTRA, DO YOU REMEMBER MEETING HER?

01:27PM 11 A. I DO NOT.

01:27PM 12 Q. AND HOW ABOUT MELISSA MCCORMICK? DO YOU REMEMBER MEETING

01:27PM 13 HER?

01:27PM 14 A. I DO NOT.

01:27PM 15 Q. OKAY. DURING THE COURSE OF THE TOUR, THOUGH, YOU WERE

01:27PM 16 SHOWN THERANOS BLOOD TESTING DEVICES; RIGHT?

01:27PM 17 A. I WAS SHOWN MULTIPLE BLOOD TESTING DEVICES, YES.

01:27PM 18 Q. RIGHT. AND YOU SAID YOU SAW ONE OF THEM WAS A LARGER

01:27PM 19 MACHINE?

01:27PM 20 A. RIGHT.

01:27PM 21 Q. CORRECT?

01:27PM 22 A. YES.

01:27PM 23 Q. IT LOOKED LIKE A COMMERCIALLY BOUGHT MACHINE PERHAPS;

01:27PM 24 RIGHT?

01:27PM 25 A. YES.

01:27PM 1 Q. BUT YOU WERE ALSO SHOWN THE EDISON, WEREN'T YOU?

01:27PM 2 A. YES.

01:27PM 3 Q. AND WHEN MR. BALWANI REACHED OUT TO YOU, HE TALKED TO YOU

01:28PM 4 ABOUT THE WORKLOAD THAT WOULD BE INVOLVED IN YOUR BEING LAB

01:28PM 5 DIRECTOR AT THERANOS; RIGHT?

01:28PM 6 A. YES.

01:28PM 7 Q. AND HE DIDN'T WANT IT TO IMPINGE TOO MUCH ON YOUR TIME;

01:28PM 8 CORRECT?

01:28PM 9 A. YES.

01:28PM 10 Q. AND HE THOUGHT -- HE SAID IT WOULD BE TEMPORARY; RIGHT?

01:28PM 11 A. YES.

01:28PM 12 Q. AND LIMITED IN HOURS; CORRECT?

01:28PM 13 A. YES.

01:28PM 14 Q. AND YOU ALSO SAID THAT YOU WERE AWARE THAT THERANOS HAD

01:28PM 15 OPENED UP THIS LABORATORY IN ARIZONA; RIGHT?

01:28PM 16 A. YES.

01:28PM 17 Q. AND WE SAW ON THE MAP THAT WAS SHOWN TO YOU ON YOUR DIRECT

01:28PM 18 EXAMINATION THAT THERE WERE MANY PATIENT SERVICE CENTERS IN

01:28PM 19 ARIZONA; CORRECT?

01:28PM 20 A. YES.

01:28PM 21 Q. AND MR. BALWANI TOLD YOU, DIDN'T HE, THAT ARIZONA WAS

01:28PM 22 GOING TO PROCESS MANY OF THE SAMPLES THAT WERE COMING IN FROM

01:28PM 23 THOSE PATIENT SERVICE CENTERS?

01:28PM 24 A. I WAS TOLD THAT. I'M TRYING TO REMEMBER WHEN AND WHO TOLD

01:28PM 25 ME.

01:28PM 1 I BELIEVE IT WAS MR. BALWANI, BUT I DON'T RECALL NOW.

01:28PM 2 Q. OKAY. SO YOU DON'T REMEMBER WHEN, BUT YOU DO REMEMBER

01:29PM 3 THAT HE TOLD YOU THAT?

01:29PM 4 A. YES.

01:29PM 5 Q. OKAY. AND YOU WERE AWARE, WEREN'T YOU, THAT WHEN THE

01:29PM 6 ARIZONA LAB OPENED, DR. DANIEL YOUNG WAS THE LAB DIRECTOR FOR

01:29PM 7 THAT LAB; RIGHT?

01:29PM 8 A. THAT I WAS AWARE OF, YES.

01:29PM 9 Q. OKAY. AND YOU, IN FACT, MET DR. YOUNG AT SOME POINT?

01:29PM 10 A. YES.

01:29PM 11 Q. AND YOU THINK IT MAY HAVE BEEN DURING THE CLIA INSPECTION;

01:29PM 12 IS THAT RIGHT?

01:29PM 13 A. YES.

01:29PM 14 Q. AND DID YOU MEET HIM ON THE EARLIER TOURS THAT YOU WENT ON

01:29PM 15 AT NEWARK?

01:29PM 16 A. I DON'T RECALL MEETING HIM PRIOR TO THAT SEPTEMBER DATE,

01:29PM 17 THE CLIA INSPECTION.

01:29PM 18 Q. OKAY. AND MR. BALWANI ALSO MENTIONED TO YOU, DIDN'T HE,

01:29PM 19 THAT THERE WAS SOMEONE IN THE THERANOS LAB WHO WAS TRYING TO

01:29PM 20 BECOME QUALIFIED TO BECOME A LAB DIRECTOR.

01:29PM 21 DO YOU REMEMBER THAT?

01:29PM 22 A. I DO NOT.

01:29PM 23 Q. DO YOU REMEMBER HEARING ABOUT A FELLOW NAMED

01:29PM 24 SURAJ SAKSENA?

01:30PM 25 A. I'M FAMILIAR WITH THE NAME --

01:30PM 1 Q. UH-HUH.

01:30PM 2 A. -- ONLY.

01:30PM 3 Q. OKAY. MAYBE I CAN SHOW YOU SOME DOCUMENTS.

01:30PM 4 A. SURE.

01:30PM 5 Q. TURN TO 20064 IN YOUR BINDER.

01:30PM 6 DO YOU SEE THAT EMAIL CHAIN?

01:30PM 7 A. YES.

01:30PM 8 Q. AND THAT'S AN EMAIL CHAIN BETWEEN YOU AND MR. -- I SHOULD

01:30PM 9 SAY DR. SAKSENA; CORRECT?

01:30PM 10 A. YES.

01:30PM 11 Q. AND MR. BALWANI IS ON THAT EMAIL CHAIN?

01:30PM 12 A. YES.

01:30PM 13 Q. OKAY. AND THIS RELATES TO A LETTER THAT DR. SAKSENA IS

01:31PM 14 REQUESTING FROM YOU; IS THAT RIGHT?

01:31PM 15 A. YES.

01:31PM 16 Q. AND THIS IS IN CONNECTION WITH THERANOS'S BUSINESS, IS

01:31PM 17 THAT RIGHT, OF RUNNING THE LAB?

01:31PM 18 A. YES.

01:31PM 19 Q. AND AS YOU SAID ON DIRECT, PEOPLE FROM -- EMPLOYEES OF

01:31PM 20 THERANOS WOULD EMAIL YOU FROM TIME TO TIME ABOUT THERANOS

01:31PM 21 BUSINESS; RIGHT?

01:31PM 22 A. YES.

01:31PM 23 Q. AND THAT WAS WITHIN THE REGULAR COURSE OF THERANOS'S

01:31PM 24 BUSINESS; CORRECT?

01:31PM 25 A. YES.

01:31PM 1 Q. AND IN THOSE EMAILS, IT WAS IMPORTANT FOR YOU TO BE
01:31PM 2 ACCURATE WHEN YOU RESPONDED TO THERANOS EMPLOYEES, WASN'T IT?

01:31PM 3 A. YES.

01:31PM 4 Q. OKAY. AND VICE VERSA? IT WAS IMPORTANT FOR THEM TO BE
01:31PM 5 ACCURATE WITH YOU; CORRECT?

01:31PM 6 A. YES.

01:31PM 7 Q. OKAY. AND AS FAR AS YOU KNOW, THE THERANOS EMAILS WERE
01:31PM 8 PRESERVED SO THAT IF ANYONE WANTED TO COME BACK LATER AND LOOK
01:31PM 9 AT THEM, THEY WOULD BE AVAILABLE, AS FAR AS YOU KNEW?

01:31PM 10 A. YES.

01:31PM 11 MS. WALSH: YOUR HONOR, WE OFFER 20064.

01:31PM 12 MR. SCHENK: YOUR HONOR, WE HAVE AN AUTHENTICATION
01:31PM 13 OBJECTION THAT MIGHT REQUIRE A MORE LENGTHY DISCUSSION. I
01:32PM 14 DON'T KNOW IF THERE IS A TIME THAT WOULD BE APPROPRIATE FOR
01:32PM 15 THAT.

01:32PM 16 MS. WALSH: WELL, YOUR HONOR, DR. DHAWAN RECOGNIZES
01:32PM 17 IT. THAT'S HIS EMAIL, SO I DON'T THINK THERE'S AN
01:32PM 18 AUTHENTICATION ISSUE.

01:32PM 19 THE COURT: IS IT THE CONTENTS OF THE EMAIL THAT
01:32PM 20 YOU'RE CONCERNED ABOUT?

01:32PM 21 MR. SCHENK: NO. NO. THERE'S A 901 ISSUE.

01:32PM 22 THE COURT: I'LL OVERRULE THE OBJECTION. IT CAN BE
01:32PM 23 ADMITTED.

01:32PM 24 (DEFENDANT'S EXHIBIT 20064 WAS RECEIVED IN EVIDENCE.)

01:32PM 25 BY MS. WALSH:

01:32PM 1 Q. OKAY. SO LET'S PULL THAT UP.

01:32PM 2 SO AT THE BOTTOM PORTION OF THE EMAIL, SURAJ SAKSENA IS

01:33PM 3 WRITING TO YOU, DR. DHAWAN, AND HE SAYS THAT -- AND THE DATE IS

01:33PM 4 OCTOBER 6TH; 2015; RIGHT?

01:33PM 5 A. YES.

01:33PM 6 Q. AND HE SAYS, "IT WAS A PLEASURE MEETING YOU A COUPLE WEEKS

01:33PM 7 BACK DURING THE LAB INSPECTION.

01:33PM 8 "AS SUNNY MENTIONED TO YOU DURING OUR MEETING, I HAVE

01:33PM 9 APPLIED WITH THE CALIFORNIA LABORATORY FIELD SERVICES FOR A

01:33PM 10 CLINICAL CHEMIST LICENSE. AS PART OF MY APPLICATION REVIEW, I

01:33PM 11 HAVE BEEN ASKED BY THE EXAMINER TO PROVIDE A LETTER FROM THE

01:33PM 12 LAB DIRECTOR CONFIRMING MY TRAINING AND WORK EXPERIENCE IN THE

01:33PM 13 CLIA LABORATORY."

01:33PM 14 DO YOU SEE THAT?

01:33PM 15 A. YES.

01:33PM 16 Q. OKAY. SO DR. SAKSENA WAS REACHING OUT TO YOU TELLING YOU

01:33PM 17 THAT HE WAS APPLYING FOR THIS LICENSE; RIGHT?

01:33PM 18 A. YES.

01:33PM 19 Q. BUT HE HAS TO PROVIDE A LETTER FROM THE LAB DIRECTOR;

01:33PM 20 CORRECT?

01:33PM 21 A. YES.

01:33PM 22 Q. OKAY. AND THEN YOU AGREE TO PROVIDE THAT LETTER FOR HIM;

01:33PM 23 RIGHT?

01:33PM 24 A. YES.

01:33PM 25 Q. AND YOU ASK HIM, SHOULD I SIGN IT VIA DOCUSIGN OR SOME

01:33PM 1 OTHER WAY?

01:33PM 2 A. UH-HUH.

01:33PM 3 Q. AND DR. SAKSENA SAYS, "THANK YOU SO MUCH FOR YOUR PROMPT

01:34PM 4 ATTENTION TO THIS. THE DOCUSIGN VERSION WILL BE ENOUGH."

01:34PM 5 DO YOU SEE THAT?

01:34PM 6 A. YES.

01:34PM 7 Q. AND THEN YOU WENT ON TO WRITE THAT LETTER; CORRECT?

01:34PM 8 A. YES.

01:34PM 9 Q. OKAY. IF YOU --

01:34PM 10 A. I DON'T SEE A COPY OF IT.

01:34PM 11 Q. RIGHT. I'M GOING TO SHOW IT TO YOU NOW.

01:34PM 12 IF YOU COULD TURN IN YOUR BINDER TO 20067.

01:34PM 13 DO YOU WANT TO TAKE A MINUTE TO READ IT?

01:34PM 14 A. I PERUSED IT, YES.

01:34PM 15 Q. OKAY. THIS IS THE LETTER THAT YOU SIGNED FOR DR. SAKSENA,

01:34PM 16 ISN'T IT?

01:34PM 17 A. YES.

01:34PM 18 Q. OKAY. AND YOU SENT THIS -- YOU WERE SIGNING AS THERANOS'S

01:34PM 19 LAB DIRECTOR; RIGHT?

01:34PM 20 A. YES.

01:34PM 21 Q. OKAY. AND THE THERANOS LOGO IS ON THE LETTERHEAD OF

01:35PM 22 THERANOS; RIGHT?

01:35PM 23 A. YES.

01:35PM 24 Q. AND YOU SENT IT TO LABORATORY FIELD SERVICES FOR

01:35PM 25 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH; CORRECT?

01:35PM 1 A. YES.

01:35PM 2 Q. AND, OF COURSE, IT'S IMPORTANT TO BE ACCURATE IN A LETTER

01:35PM 3 TO THE HEALTH AUTHORITIES; RIGHT?

01:35PM 4 A. YES.

01:35PM 5 Q. OKAY. AND AS FAR AS YOU WERE AWARE, THE LETTER WAS

01:35PM 6 PRESERVED SO WE CAN COME BACK AND LOOK AT IT LATER; RIGHT?

01:35PM 7 A. YES.

01:35PM 8 MS. WALSH: YOUR HONOR, I OFFER 20067.

01:35PM 9 MR. SCHENK: NO OBJECTION.

01:35PM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:35PM 11 MS. WALSH: THANK YOU.

01:35PM 12 (DEFENDANT'S EXHIBIT 20067 WAS RECEIVED IN EVIDENCE.)

01:35PM 13 BY MS. WALSH:

01:35PM 14 Q. SO, DR. DHAWAN, TURNING TO PAGE 2 OF THE LETTER.

01:35PM 15 A. UH-HUH, YES.

01:35PM 16 Q. AND THAT'S YOUR SIGNATURE AT THE BOTTOM?

01:35PM 17 A. YES.

01:35PM 18 Q. AND LOOKING AT THE PARAGRAPH STARTING WITH "FURTHER."

01:35PM 19 IT'S THE SECOND PARAGRAPH.

01:35PM 20 A. YES.

01:35PM 21 Q. AND THE SECOND SENTENCE SAYS, "DR. SAKSENA HAS HELPED

01:36PM 22 PERFORM HIGH-COMPLEXITY LABORATORY DEVELOPED TESTS" -- THOSE

01:36PM 23 ARE LDT'S; RIGHT?

01:36PM 24 A. YES.

01:36PM 25 Q. AND THOSE ARE TESTS THAT THERANOS DEVELOPED IN ITS LAB;

01:36PM 1 CORRECT?

01:36PM 2 A. YES.

01:36PM 3 Q. AS OPPOSED TO COMMERCIAL ONES; RIGHT?

01:36PM 4 A. YES.

01:36PM 5 Q. YES. -- "DEVELOPED BY THERANOS IN THE SPECIALTIES OF

01:36PM 6 CHEMISTRY, HEMATOLOGY, IMMUNOASSAYS (ENDOCRINOLOGY) FOR A

01:36PM 7 PERIOD OF THREE YEARS (I HAVE ATTACHED A LIST OF THE HIGH

01:36PM 8 COMPLEXITY LDT'S THAT ARE PERFORMED IN THE THERANOS

01:36PM 9 CLIA-CERTIFIED LABORATORY TO THIS LETTER) ."

01:36PM 10 AND THEN IF YOU TURN TO THE FIRST PAGE OF THIS LETTER, YOU

01:36PM 11 INTRODUCE YOURSELF AS THE CLIA LAB DIRECTOR FOR THE CLIA

01:36PM 12 CERTIFIED HIGH COMPLEXITY LAB; CORRECT?

01:36PM 13 A. YES.

01:36PM 14 Q. AND YOU'RE WRITING IN SUPPORT OF DR. SURAJ SAKSENA'S

01:36PM 15 APPLICATION FOR A CLINICAL CHEMIST LICENSE; RIGHT?

01:37PM 16 A. YES.

01:37PM 17 Q. I'LL GO SLOWER.

01:37PM 18 AND YOU SAY, "I HAVE SERVED AS LABORATORY DIRECTOR SINCE

01:37PM 19 DECEMBER 2014"; RIGHT?

01:37PM 20 A. YES.

01:37PM 21 Q. "PRIOR TO MY TENURE, ADAM ROSENDORFF, M.D., SERVED AS

01:37PM 22 LABORATORY DIRECTOR OF THIS FACILITY."

01:37PM 23 RIGHT?

01:37PM 24 A. YES.

01:37PM 25 Q. "UNDER OUR SUPERVISION, DR. SAKSENA HAS SATISFIED BOTH THE

01:37PM 1 TRAINING AND THE WORK EXPERIENCE REQUIREMENTS FOR THIS
01:37PM 2 LICENSE."

01:37PM 3 RIGHT?

01:37PM 4 A. YES.

01:37PM 5 Q. AND A COUPLE MORE SENTENCES.

01:37PM 6 "AS REQUIRED BY THIS CITATION, HE HAS COMPLETED THE
01:37PM 7 EQUIVALENT OF ONE YEAR OF TRAINING AS A LICENSED TRAINEE IN THE
01:37PM 8 FIELD OF CLINICAL CHEMISTRY."

01:37PM 9 RIGHT?

01:37PM 10 A. YES.

01:37PM 11 Q. "IN ADDITION, AS FURTHER REQUIRED BY THIS, DR. SAKSENA HAS
01:37PM 12 MORE THAN THREE YEARS EXPERIENCE IN CLINICAL CHEMISTRY IN A
01:37PM 13 HIGH COMPLEXITY CLINICAL LABORATORY."

01:37PM 14 RIGHT?

01:37PM 15 A. YES.

01:37PM 16 Q. AND SO DOES THIS HELP YOU REMEMBER THAT DR. SAKSENA WAS
01:38PM 17 TRYING TO GET CERTIFIED TO BECOME A LAB DIRECTOR IN A HIGH
01:38PM 18 COMPLEXITY LAB; RIGHT?

01:38PM 19 A. YES.

01:38PM 20 Q. IN THE STATE OF CALIFORNIA?

01:38PM 21 A. YES.

01:38PM 22 Q. AND THE INTENTION WAS THAT HE WAS GOING TO BE THE
01:38PM 23 FULL-TIME LAB DIRECTOR AT THERANOS'S CLIA LAB?

01:38PM 24 MR. SCHENK: OBJECTION. SPECULATION.

01:38PM 25 THE WITNESS: I DIDN'T KNOW.

01:38PM 1 THE COURT: SUSTAINED AS TO THE LAST PART AS
01:38PM 2 SPECULATION.
01:38PM 3 IF YOU WANT TO BREAK THAT UP.
01:38PM 4 MS. WALSH: SURE.
01:38PM 5 Q. SO DR. SAKSENA WAS APPLYING FOR THIS LICENSE; RIGHT?
01:38PM 6 A. YES.
01:38PM 7 Q. AND HIS GOAL IN APPLYING FOR THIS, IF YOU KNOW, WAS TO BE
01:38PM 8 CERTIFIED TO BE LAB DIRECTOR IN A HIGH COMPLEXITY LAB IN
01:38PM 9 CALIFORNIA; RIGHT?
01:38PM 10 A. IF THAT'S WHAT HE WAS TRYING TO DO, YES.
01:38PM 11 Q. YEAH. AND THERANOS'S LAB IN NEWARK, CALIFORNIA WAS A HIGH
01:38PM 12 COMPLEXITY LAB; CORRECT?
01:38PM 13 A. YES.
01:38PM 14 Q. AND AS FAR AS YOU'RE AWARE, THERANOS DIDN'T HAVE ANOTHER
01:38PM 15 CALIFORNIA LAB THAT WAS HIGH COMPLEXITY; RIGHT?
01:39PM 16 A. AS FAR AS I'M AWARE, YES.
01:39PM 17 Q. OKAY. OKAY.
01:39PM 18 WE CAN TAKE THAT DOWN.
01:39PM 19 DID YOU EVER LEARN, DR. DHAWAN, HOW DR. SAKSENA DID ON HIS
01:39PM 20 EXAM TO GET THAT LICENSE?
01:39PM 21 A. I DON'T HAVE ACCESS TO THAT INFORMATION, NO.
01:39PM 22 Q. WERE YOU EVER TOLD IT?
01:39PM 23 A. I DON'T RECALL.
01:39PM 24 Q. OKAY. AND ARE YOU AWARE, DR. DHAWAN, THAT AT A CERTAIN
01:39PM 25 POINT LATER IN TIME, CALIFORNIA LAW REGARDING THE

01:39PM 1 QUALIFICATIONS FOR LAB DIRECTORS CHANGED? ARE YOU AWARE OF
01:40PM 2 THAT?

01:40PM 3 MR. SCHENK: OBJECTION. RELEVANCE.

01:40PM 4 THE COURT: ARE YOU TIME STAMPING THIS TO HIS TIME
01:40PM 5 WITH THIS COMPANY OR -- I DON'T SEE THE RELEVANCE OTHERWISE, SO
01:40PM 6 YOU'LL HAVE TO LAY A BETTER FOUNDATION.

01:40PM 7 MS. WALSH: SURE. SURE.

01:40PM 8 Q. SO YOU'RE AWARE THAT DR. SAKSENA WAS APPLYING TO BE A LAB
01:40PM 9 DIRECTOR AT A HIGH COMPLEXITY LAB; RIGHT?

01:40PM 10 A. YES.

01:40PM 11 Q. AND THERE WERE CERTAIN REQUIREMENTS UNDER CALIFORNIA LAW
01:40PM 12 FOR SOMEONE WHO WASN'T A MEDICAL DOCTOR; IS THAT RIGHT?

01:40PM 13 A. YES.

01:40PM 14 Q. AND THE REQUIREMENTS FOR A PH.D. WERE DIFFERENT FROM A
01:40PM 15 MEDICAL DOCTOR? WERE YOU AWARE OF THAT?

01:40PM 16 A. YES, I WAS.

01:40PM 17 Q. OKAY. AND A PH.D. COULD BECOME A LAB DIRECTOR FOR A HIGH
01:40PM 18 COMPLEXITY LAB IF HE HAD A CERTAIN AMOUNT OF TRAINING; RIGHT?

01:40PM 19 A. YES.

01:40PM 20 Q. IN A LAB; RIGHT?

01:40PM 21 A. YES.

01:40PM 22 Q. AND PASSED AN EXAM; CORRECT?

01:40PM 23 A. I WOULD HAVE TO LOOK AT THE STATUTE. I DON'T HAVE THAT
01:41PM 24 STATUTE IN FRONT OF ME.

01:41PM 25 Q. OKAY. ARE YOU AWARE THAT THAT WAS GENERALLY THE

01:41PM 1 REQUIREMENT, THAT IT WAS TRAINING PLUS THE EXAM?

01:41PM 2 A. THERE ARE SPECIFIC REQUIREMENTS FOR THAT AND I'D HAVE TO

01:41PM 3 LOOK THEM UP. I'M SORRY, I DON'T HAVE THEM IN FRONT OF ME.

01:41PM 4 Q. AND I GUESS I COULD MOVE ON FROM THEM, BUT ARE YOU AWARE

01:41PM 5 THAT THOSE REQUIREMENTS CHANGED AT A CERTAIN POINT IN TIME?

01:41PM 6 MR. SCHENK: RELEVANCE.

01:41PM 7 THE COURT: SUSTAINED.

01:41PM 8 MS. WALSH: OKAY. WELL, MAYBE WE'LL COME BACK TO

01:41PM 9 THAT.

01:42PM 10 (PAUSE IN PROCEEDINGS.)

01:42PM 11 BY MS. WALSH:

01:42PM 12 Q. OKAY. SO, MR. SCHENK ASKED YOU ABOUT DR. LYNETTE SAWYER

01:42PM 13 ON DIRECT.

01:42PM 14 DO YOU REMEMBER THAT?

01:42PM 15 A. YES.

01:42PM 16 Q. AND WHEN -- SO SHE WAS THE CO-LAB DIRECTOR WHILE YOU WERE

01:42PM 17 THE LAB DIRECTOR OF THERANOS; IS THAT RIGHT?

01:42PM 18 A. YES.

01:42PM 19 Q. AND SHE WAS ALSO HIRED IN NOVEMBER 2014 TO BE A

01:42PM 20 CO-LAB DIRECTOR; CORRECT?

01:42PM 21 A. ACCORDING TO WHAT I'VE SEEN, YES.

01:42PM 22 Q. OKAY. AND SHE -- BEING A CO-LAB DIRECTOR, SHE WAS,

01:42PM 23 SIMILAR TO YOU, NOT A FULL-TIME LAB DIRECTOR; IS THAT RIGHT?

01:42PM 24 A. I DON'T KNOW HOW MUCH TIME SHE SPENT. I'M SORRY.

01:42PM 25 Q. OKAY. WERE YOU AWARE THAT SHE WAS A LAB DIRECTOR PURSUANT

01:43PM 1 TO A CONSULTING AGREEMENT LIKE YOU?

01:43PM 2 A. I WAS NOT AWARE OF AN AGREEMENT.

01:43PM 3 Q. OKAY. BUT YOU ARE AWARE THAT YOU WERE BOTH LISTED ON THE
01:43PM 4 CLIA LICENSE AGREEMENT AS LAB DIRECTORS; RIGHT?

01:43PM 5 A. YES.

01:43PM 6 Q. OKAY. OKAY. AND SO DURING THIS PERIOD, NOVEMBER 2014 TO
01:43PM 7 JUNE -- THROUGH JUNE 2015, YOU TESTIFIED THAT YOU WERE ONLY
01:43PM 8 WORKING A FEW HOURS AT THERANOS; CORRECT?

01:43PM 9 A. YES.

01:43PM 10 Q. OKAY. AND WHILE YOU WERE ONLY WORKING A FEW HOURS, YOU
01:43PM 11 WERE AWARE, WEREN'T YOU, THAT DR. SAWYER WAS SIGNING DOCUMENTS
01:44PM 12 RELATED TO THE LAB?

01:44PM 13 A. I WAS NEVER TOLD THAT, AND NOT -- NO INFORMATION LIKE THAT
01:44PM 14 WAS GIVEN TO ME, SO I WAS NOT AWARE OF WHAT SHE WAS SIGNING.

01:44PM 15 Q. OKAY. SO YOU WEREN'T AWARE AT THE TIME THAT SHE WAS
01:44PM 16 SIGNING A LOT OF DOCUMENTS?

01:44PM 17 A. NO. I WAS NEVER SHOWN THOSE DOCUMENTS, NO.

01:44PM 18 Q. OKAY. SO LET'S -- WHY DON'T YOU TURN IN YOUR BINDER TO
01:44PM 19 10525.

01:44PM 20 DO YOU SEE THAT DOCUMENT?

01:44PM 21 A. YES, I DO.

01:44PM 22 Q. AND DO YOU SEE THAT THAT WAS SIGNED BY LYNETTE SAWYER?

01:45PM 23 A. YES.

01:45PM 24 Q. AND IT'S DATED JANUARY 11TH, 2015; IS THAT RIGHT?

01:45PM 25 A. YES.

01:45PM 1 Q. AND IT REFERS TO A VERIFICATION OF AN ADVIA 2400.

01:45PM 2 DO YOU SEE THAT?

01:45PM 3 A. YES.

01:45PM 4 Q. AND THAT'S A TESTING DEVICE; RIGHT?

01:45PM 5 A. YES.

01:45PM 6 Q. OKAY.

01:45PM 7 YOUR HONOR, WE OFFER 10525.

01:45PM 8 MR. SCHENK: FOUNDATION.

01:45PM 9 THE COURT: CAN YOU LAY A FOUNDATION THROUGH THIS

01:45PM 10 WITNESS?

01:45PM 11 MS. WALSH: YES, I CAN TRY.

01:45PM 12 Q. DR. DHAWAN, DO YOU UNDERSTAND WHEN TESTS ARE BROUGHT

01:45PM 13 ONLINE IN A LAB, THERE ARE REGULATIONS THAT ALLOW A LAB

01:45PM 14 DIRECTOR TO VERIFY THAT IT'S APPROPRIATE TO BRING THAT TEST

01:45PM 15 ONLINE; RIGHT?

01:45PM 16 A. YES.

01:45PM 17 Q. OKAY. AND EITHER LAB -- IF THERE ARE TWO LAB DIRECTORS,

01:45PM 18 EITHER LAB DIRECTOR CAN ATTEST TO THAT VERIFICATION AND CERTIFY

01:45PM 19 THAT IT'S APPROPRIATE FOR THAT TEST TO BE OFFERED IN THE LAB;

01:46PM 20 IS THAT RIGHT?

01:46PM 21 A. YES.

01:46PM 22 Q. AND SO YOUR CO-LAB DIRECTOR, DR. SAWYER, WOULD HAVE HAD

01:46PM 23 THE ABILITY UNDER THE LAW TO SERVE THAT FUNCTION, TO VERIFY LAB

01:46PM 24 TESTS; RIGHT?

01:46PM 25 A. THAT'S PART OF THE STATUTE, YES.

01:46PM 1 Q. AND WHEN THAT IS DONE, THOSE RECORDS ARE MAINTAINED BY THE
01:46PM 2 LAB; RIGHT?

01:46PM 3 A. YES.

01:46PM 4 Q. AND SO IF THERE'S EVER A QUESTION ABOUT WHEN THE TEST WAS
01:46PM 5 VERIFIED, PEOPLE COULD GO BACK AND LOOK AT THAT DOCUMENTATION;
01:46PM 6 RIGHT?

01:46PM 7 A. YES.

01:46PM 8 Q. AND DO YOU RECOGNIZE THIS DOCUMENT AS ONE OF THOSE
01:46PM 9 DOCUMENTS VERIFYING THE TESTS WITHIN THE THERANOS LAB?

01:46PM 10 A. YES.

01:46PM 11 MS. WALSH: YOUR HONOR, WE OFFER 10525.

01:46PM 12 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

01:46PM 13 (DEFENDANT'S EXHIBIT 10525 WAS RECEIVED IN EVIDENCE.)

01:46PM 14 BY MS. WALSH:

01:46PM 15 Q. OKAY. SO LOOKING AT THE TOP LEFT, THIS WAS PREPARED FOR
01:46PM 16 THERANOS; RIGHT?

01:47PM 17 A. YES.

01:47PM 18 Q. AND IT RELATES TO THE ADVIA 2400?

01:47PM 19 A. YES.

01:47PM 20 Q. FOR A SPECIFIC BLOOD TEST; CORRECT?

01:47PM 21 A. YES.

01:47PM 22 Q. AND THE VERIFICATION DATE WAS NOVEMBER 21ST, 2014; RIGHT?

01:47PM 23 A. YES.

01:47PM 24 Q. AND THEN AT THE BOTTOM DR. SAWYER'S SIGNATURE APPEARS;
01:47PM 25 RIGHT?

01:47PM 1 A. YES.

01:47PM 2 Q. AND THE DATE IS JANUARY 11TH, 2015; RIGHT?

01:47PM 3 A. YES.

01:47PM 4 Q. AND THAT'S IN THAT PERIOD THAT YOU WEREN'T DOING THAT MUCH

01:47PM 5 WORK AT THERANOS; CORRECT?

01:47PM 6 A. YES.

01:47PM 7 Q. OKAY. AND WHAT SHE SAYS IN SIGNING THIS DOCUMENT IS, "I

01:47PM 8 HAVE REVIEWED THE MVP DATA" --

01:47PM 9 DO YOU KNOW WHAT THAT IS?

01:47PM 10 A. I'M NOT FAMILIAR WITH THAT SPECIFIC TERM. I'D HAVE TO

01:47PM 11 LOOK IT UP.

01:47PM 12 Q. OKAY. -- "FOR SERUM BARBITURATE ON THE ADVIA 2400 AND

01:47PM 13 APPROVE THE USE OF THIS TEST IN OUR FACILITY."

01:47PM 14 DO YOU SEE THAT?

01:47PM 15 A. YES.

01:47PM 16 Q. AND SO DR. SAWYER IS APPROVING THAT TEST; CORRECT?

01:48PM 17 A. YES.

01:48PM 18 Q. ALL RIGHT. YOU CAN TAKE THAT DOWN.

01:48PM 19 DR. DHAWAN, IF YOU CAN TURN IN YOUR BINDER TO 20575.

01:48PM 20 AND DO YOU RECOGNIZE THIS AS A STANDARD OPERATING

01:48PM 21 PROCEDURE AT THERANOS?

01:48PM 22 A. IT SAYS SOP, YES.

01:48PM 23 Q. SOP, OKAY.

01:48PM 24 AND THIS WAS SIGNED BY DR. SAWYER ALSO; RIGHT?

01:48PM 25 A. YES.

01:48PM 1 Q. ON MAY 5TH, 2015?

01:48PM 2 A. YES.

01:48PM 3 Q. CORRECT?

01:48PM 4 YOUR HONOR, WE OFFER 20575.

01:48PM 5 MR. SCHENK: FOUNDATION.

01:48PM 6 THE COURT: DO YOU WANT TO JUST LAY A FOUNDATION?

01:48PM 7 MS. WALSH: SURE.

01:49PM 8 Q. DR. DHAWAN, YOU'RE AWARE THAT IN ORDER TO -- ONCE A TEST
01:49PM 9 IS VERIFIED OR VALIDATED IN A LAB, THE LAB HAS TO ESTABLISH
01:49PM 10 CERTAIN STANDARD OPERATING PROCEDURES THAT GOVERN THE STEPS FOR
01:49PM 11 OPERATING THAT TEST; IS THAT RIGHT?

01:49PM 12 A. YES.

01:49PM 13 Q. OKAY. AND A LAB DIRECTOR UNDER THE LAW IS AUTHORIZED TO
01:49PM 14 APPROVE STANDARD OPERATING PROCEDURES FOR A LAB; CORRECT?

01:49PM 15 A. YES.

01:49PM 16 Q. AND DR. SAWYER DURING THIS TIME PERIOD WAS ONE OF THE LAB
01:49PM 17 DIRECTORS AT THERANOS; RIGHT?

01:49PM 18 A. YES.

01:49PM 19 Q. AND SHE APPROVED THE STANDARD OPERATING PROCEDURE; RIGHT?

01:49PM 20 A. YES.

01:49PM 21 MS. WALSH: YOUR HONOR, WE OFFER 20575.

01:49PM 22 THE COURT: AND HAS HE TESTIFIED IF HE'S SEEN THESE
01:49PM 23 SOP'S BEFORE?

01:49PM 24 MAYBE YOU CAN JUST ASK HIM IF HE'S FAMILIAR WITH THIS. IF
01:49PM 25 YOU DID, I MISSED IT. I APOLOGIZE.

01:50PM 1 MS. WALSH: SURE.

01:50PM 2 Q. SO, DR. DHAWAN, HAVE YOU SEEN THE STANDARD OPERATING

01:50PM 3 PROCEDURE BEFORE?

01:50PM 4 A. THIS ONE I DON'T RECALL.

01:50PM 5 Q. OKAY. IS THIS -- IS THERE ANYTHING UNUSUAL ABOUT THIS --

01:50PM 6 ABOUT WHAT APPEARS HERE THAT IS DIFFERENT FROM STANDARD

01:50PM 7 OPERATING PROCEDURES YOU'VE SEEN IN YOUR WORK AT YOUR LAB AS A

01:50PM 8 LAB DIRECTOR?

01:50PM 9 A. IT'S -- THIS IS A STANDARD, STANDARD OPERATING PROCEDURE,

01:50PM 10 SO --

01:50PM 11 MS. WALSH: YOUR HONOR, WE OFFER THE EXHIBIT.

01:50PM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:50PM 13 (DEFENDANT'S EXHIBIT 20575 WAS RECEIVED IN EVIDENCE.)

01:50PM 14 BY MS. WALSH:

01:50PM 15 Q. OKAY. LET'S LOOK AT THE TOP. AGAIN, IT SAYS STANDARD

01:50PM 16 OPERATING PROCEDURE.

01:50PM 17 DR. SAWYER SIGNED IT; CORRECT?

01:50PM 18 A. YES.

01:50PM 19 Q. AND THAT'S ON MAY 5TH, 2015; RIGHT?

01:50PM 20 A. YES.

01:50PM 21 Q. AND AGAIN, THIS IS DURING THAT PERIOD WHERE YOU WERE NOT

01:50PM 22 DOING THAT MUCH WORK FOR THERANOS; RIGHT?

01:50PM 23 A. YES.

01:50PM 24 Q. OKAY. AND THERE ARE OTHER PEOPLE WHO SIGNED THIS BEFORE

01:51PM 25 DR. SAWYER SIGNED IT; RIGHT?

01:51PM 1 A. YES.

01:51PM 2 Q. FOR EXAMPLE, LINDSAY MARSH IS THE FIRST PERSON, AND IT

01:51PM 3 LOOKS LIKE SHE'S THE AUTHOR OF THE DOCUMENT; RIGHT?

01:51PM 4 A. YES.

01:51PM 5 Q. AND HER TITLE IS CLINICAL LABORATORY ASSOCIATE; RIGHT?

01:51PM 6 A. YES.

01:51PM 7 Q. AND THEN LINA CASTRO REVIEWED THE DOCUMENT; RIGHT?

01:51PM 8 A. YES.

01:51PM 9 Q. AND HER TITLE IS CLINICAL LABORATORY SCIENTIST; CORRECT?

01:51PM 10 A. YES.

01:51PM 11 Q. AND THEN THERE'S ANOTHER REVIEWER WHO IS GODFRED MASINDE.

01:51PM 12 DO YOU SEE THAT?

01:51PM 13 A. YES.

01:51PM 14 Q. HE'S A PH.D.; RIGHT?

01:51PM 15 A. YES.

01:51PM 16 Q. AND HE'S A TECHNICAL SUPERVISOR; RIGHT?

01:51PM 17 A. YES.

01:51PM 18 Q. AND TECHNICAL SUPERVISORS ARE PRETTY HIGH RANKED WITHIN

01:51PM 19 THE LAB; CORRECT?

01:51PM 20 A. YES.

01:51PM 21 Q. AND DID YOU MEET DR. MASINDE?

01:51PM 22 A. ONCE.

01:51PM 23 Q. OKAY. AND THEN FINALLY, AFTER ALL OF THOSE PEOPLE HAVE

01:51PM 24 REVIEWED THIS DOCUMENT, DR. SAWYER, YOUR CO-LAB DIRECTOR, SIGNS

01:51PM 25 THE DOCUMENT; CORRECT?

01:51PM 1 A. YES.

01:52PM 2 Q. OKAY. WE CAN TAKE THAT DOWN.

01:52PM 3 I JUST HAVE ONE MORE. IT'S 10526.

01:52PM 4 DO YOU SEE THAT?

01:52PM 5 A. YES.

01:52PM 6 Q. OKAY. AND IS THAT ANOTHER STANDARD OPERATING PROCEDURE AT

01:52PM 7 THERANOS?

01:52PM 8 A. YES.

01:52PM 9 Q. AND THIS WAS FOR THE CLIA LAB; RIGHT?

01:52PM 10 A. YES.

01:52PM 11 Q. AND THIS SOP WAS SIGNED BY A NUMBER OF DIFFERENT PEOPLE,

01:52PM 12 INCLUDING DR. SAWYER AS THE LAB DIRECTOR; RIGHT?

01:52PM 13 A. YES.

01:52PM 14 Q. AND IT WAS SIGNED ON MARCH 30TH, 2015; CORRECT?

01:52PM 15 A. YES.

01:52PM 16 MS. WALSH: YOUR HONOR, WE OFFER 10526.

01:52PM 17 MR. SCHENK: SAME OBJECTIONS, YOUR HONOR.

01:52PM 18 THE COURT: AS TO FOUNDATION, IS THAT THE OBJECTION?

01:53PM 19 I'M SORRY.

01:53PM 20 MR. SCHENK: YES.

01:53PM 21 THE COURT: OVERRULED. THIS IS ADMITTED AND IT MAY

01:53PM 22 BE PUBLISHED.

01:53PM 23 (DEFENDANT'S EXHIBIT 10526 WAS RECEIVED IN EVIDENCE.)

01:53PM 24 BY MS. WALSH:

01:53PM 25 Q. AND WE'LL JUST TAKE A QUICK LOOK AT THIS, DR. DHAWAN.

01:53PM 1 THE FIRST SIGNATORY IS BROOKE BIVENS.

01:53PM 2 DO YOU SEE THAT?

01:53PM 3 A. YES.

01:53PM 4 Q. AND TITLED CLA; RIGHT?

01:53PM 5 A. YES.

01:53PM 6 Q. AND WHAT DOES THAT STAND FOR?

01:53PM 7 A. CLINICAL LABORATORY ASSOCIATE.

01:53PM 8 Q. YES. AND THAT'S IN MARCH OF 2015; RIGHT?

01:53PM 9 A. YES.

01:53PM 10 Q. AND THE NEXT ONE IS LINA CASTRO. WE SAW HER FROM BEFORE;

01:53PM 11 RIGHT?

01:53PM 12 A. YES.

01:53PM 13 Q. AND SHE'S A CLS; CORRECT?

01:53PM 14 A. YES.

01:53PM 15 Q. AND THEN AGAIN DR. MASINDE READS IT AND APPROVES IT AFTER

01:53PM 16 THEM; RIGHT?

01:53PM 17 A. YES, YES.

01:53PM 18 Q. AND HE WAS THE TECHNICAL SUPERVISOR?

01:53PM 19 A. YES.

01:53PM 20 Q. AND THEN FINALLY, DR. SAWYER GIVES HER FINAL APPROVAL;

01:53PM 21 CORRECT?

01:53PM 22 A. YES.

01:53PM 23 Q. AND SHE DOES THAT ON MARCH 30TH, 2015; RIGHT?

01:53PM 24 A. YES.

01:53PM 25 Q. AND AGAIN, THIS IS DURING THAT PERIOD WHERE YOU WERE NOT

01:53PM 1 REALLY WORKING TOO MUCH AT THERANOS?

01:53PM 2 A. YES.

01:53PM 3 Q. OKAY. AND JUST ONE MORE THING I WANTED TO POINT OUT ON
01:54PM 4 PAGE 4 OF THE EXHIBIT UNDER RESPONSIBILITIES, JUST 4.1.

01:54PM 5 "IT IS THE RESPONSIBILITY OF THE LABORATORY DIRECTOR OR
01:54PM 6 DESIGNEE THEREOF (I.E. TECHNICAL OR GENERAL SUPERVISOR) TO
01:54PM 7 ENSURE TESTING PERSONNEL ARE ADEQUATELY TRAINED IN THESE
01:54PM 8 METHODS."

01:54PM 9 DO YOU SEE THAT?

01:54PM 10 A. YES.

01:54PM 11 Q. ON PAGE 4?

01:54PM 12 A. YES.

01:54PM 13 Q. AND IT IS YOUR UNDERSTANDING, ISN'T IT, THAT IT IS A LAB
01:54PM 14 DIRECTOR'S RESPONSIBILITY TO MAKE SURE EVERYONE IN THE LAB IS
01:54PM 15 TRAINED; RIGHT?

01:54PM 16 A. YES.

01:54PM 17 Q. EVEN IF THE LAB DIRECTOR DOESN'T DO IT HIM OR HERSELF AND
01:54PM 18 DELEGATES THAT TO OTHERS, ULTIMATELY IT IS THE LAB DIRECTOR'S
01:54PM 19 RESPONSIBILITY; CORRECT?

01:54PM 20 A. AS IT SAYS HERE IN THE SOP, YES.

01:54PM 21 Q. OKAY. SO I WANT TO SWITCH GEARS AND TALK ABOUT YOUR
01:55PM 22 COMPENSATION ARRANGEMENTS WITH THERANOS. YOU SPOKE A LITTLE
01:55PM 23 BIT ABOUT THAT ON DIRECT.

01:55PM 24 YOU STARTED OUT WITH A CONSULTING AGREEMENT; RIGHT?

01:55PM 25 A. YES.

01:55PM 1 Q. AND THE CONSULTING AGREEMENT CALLED FOR YOU BEING PAID IN
01:55PM 2 CASH; RIGHT?

01:55PM 3 A. YES.

01:55PM 4 Q. BUT YOU EXPRESSED A DESIRE TO MR. BALWANI TO BE PAID BY
01:55PM 5 STOCK OPTIONS; CORRECT?

01:55PM 6 A. YES.

01:55PM 7 Q. AND IT WAS EITHER STOCK OPTIONS OR RESTRICTED STOCK UNITS,
01:55PM 8 WHICHEVER THERANOS WAS ISSUING AT THE TIME; RIGHT?

01:55PM 9 A. YES.

01:55PM 10 Q. OKAY. AND THAT SWITCH FROM BEING A PAID CONSULTANT TO
01:56PM 11 BEING PAID IN STOCK, THAT TOOK A WHILE TO WORK OUT, DIDN'T IT?

01:56PM 12 A. I BELIEVE SO, YES.

01:56PM 13 Q. OKAY. THERE WAS A LOT OF BACK AND FORTH, NEGOTIATING WHAT
01:56PM 14 IT WOULD BE; RIGHT?

01:56PM 15 A. I THINK IT WAS JUST TIME. THERE WAS NOT -- I DON'T RECALL
01:56PM 16 NEGOTIATION.

01:56PM 17 Q. OKAY. BUT IT TOOK SOME TIME TO WORK THAT OUT?

01:56PM 18 A. YES.

01:56PM 19 Q. OKAY. AND YOU KNOW, OR I GUESS DID YOU LEARN THAT
01:56PM 20 THERANOS AT THE TIME WASN'T ISSUING STOCK OPTIONS TO ITS
01:56PM 21 EMPLOYEES?

01:56PM 22 A. I DID NOT KNOW THAT.

01:56PM 23 Q. OKAY. AND WHAT MR. BALWANI ENDED UP OFFERING YOU WERE
01:56PM 24 RESTRICTED STOCK UNITS; RIGHT?

01:56PM 25 A. YES.

01:56PM 1 Q. OKAY. AND YOU WERE AWARE, WEREN'T YOU, THAT THE BOARD IS
01:56PM 2 THE ONE WHO HAS TO APPROVE EITHER STOCK OPTIONS OR RESTRICTED
01:56PM 3 STOCK UNITS; RIGHT?

01:56PM 4 A. I'M AWARE NOW, YES.

01:56PM 5 Q. OKAY. AND ALL OF THAT TOOK TIME; CORRECT?

01:56PM 6 A. IT TOOK TIME, YES.

01:57PM 7 Q. OKAY. AND YOU TESTIFIED ON DIRECT THAT YOU RECEIVED THIS
01:57PM 8 EMPLOYMENT AGREEMENT FOR YOU TO BE AN AT WILL EMPLOYEE.
01:57PM 9 DO YOU REMEMBER THAT?

01:57PM 10 A. YES, IT WAS SHOWN TO ME, YES.

01:57PM 11 Q. OKAY. AND THAT WAS FROM MONA RAMAMURTHY.
01:57PM 12 DO YOU REMEMBER THAT?

01:57PM 13 A. YES, YES.

01:57PM 14 Q. AND SHE SENT YOU THE EMPLOYMENT AGREEMENT; RIGHT?

01:57PM 15 A. YES.

01:57PM 16 Q. AND IN THE EMPLOYMENT AGREEMENT, IT ARTICULATES THE
01:57PM 17 RESTRICTED STOCK UNIT THAT YOU'RE BEING ISSUED; RIGHT?

01:57PM 18 A. YES.

01:57PM 19 Q. OKAY. AND YOU SAID YOU WEREN'T SURE WHY SHE SENT YOU
01:57PM 20 THAT; RIGHT?

01:57PM 21 A. I WASN'T SURE WHY IT WAS SENT ON THAT DATE.

01:57PM 22 Q. YEAH. OKAY.
01:57PM 23 DID YOU THINK THE FACT THAT YOU WERE GETTING RESTRICTED
01:57PM 24 STOCK UNITS MAY HAVE HAD SOMETHING TO DO WITH GETTING AN
01:57PM 25 EMPLOYMENT AGREEMENT FROM THE COMPANY WITH THESE RESTRICTED

01:57PM 1 STOCK UNIT IN IT?

01:57PM 2 A. YEAH, THAT MADE LOGICAL SENSE THAT THAT WAS MY

01:58PM 3 COMPENSATION, YEAH.

01:58PM 4 Q. RIGHT. AND IT TOOK THAT LONG TO GET THE STOCK UNITS

01:58PM 5 ISSUED TO YOU TO SEND YOU THE EMPLOYMENT AGREEMENT; RIGHT?

01:58PM 6 A. I DON'T KNOW WHAT THE INNER WORKINGS IN THE COMPANY WERE

01:58PM 7 TO GET ME THOSE. I JUST KNEW IT TOOK TIME, SO IT TOOK TIME.

01:58PM 8 Q. RIGHT. AND EVEN THOUGH YOU DIDN'T KNOW THE INNER

01:58PM 9 WORKINGS, YOU KNEW THAT IT TOOK THAT AMOUNT OF TIME TO FINALLY

01:58PM 10 NAIL DOWN HOW MANY RESTRICTED STOCK UNITS YOU WERE GOING TO

01:58PM 11 GET?

01:58PM 12 A. AGAIN, I DON'T KNOW THE INNER WORKINGS OF THE COMPANY AND

01:58PM 13 I CAN'T SAY WHY IT TOOK THAT LONG, BUT IT TOOK THAT LONG.

01:58PM 14 Q. IT TOOK THAT LONG?

01:58PM 15 A. I JUST DON'T KNOW WHY.

01:58PM 16 Q. UNDERSTOOD. OKAY.

01:58PM 17 SO YOU'VE ALSO TESTIFIED, AND WE'VE BEEN THROUGH THIS SO I

01:59PM 18 DON'T WANT TO DWELL ON IT TOO MUCH, BUT YOU WERE PART-TIME?

01:59PM 19 A. UH-HUH.

01:59PM 20 Q. AND YOU DIDN'T SPEND TOO MUCH TIME AT THERANOS; RIGHT?

01:59PM 21 A. YES.

01:59PM 22 Q. YOU DIDN'T SPEND MUCH TIME?

01:59PM 23 A. YES.

01:59PM 24 Q. AND AT THE TIME, THE CLIA REGULATIONS ALLOWED FOR YOU TO

01:59PM 25 BE A PART-TIME LAB DIRECTOR, DIDN'T IT?

01:59PM 1 A. I WOULD HAVE TO REVIEW THE CLIA REGULATIONS COMPLETELY,
01:59PM 2 BUT I WOULD ASSUME YES.

01:59PM 3 Q. OKAY. WELL, LET'S TAKE A LOOK AT 7603DD, WHICH IS IN YOUR
01:59PM 4 BINDER.

02:00PM 5 DO YOU HAVE THAT IN FRONT OF YOU?

02:00PM 6 A. YES, I DO.

02:00PM 7 Q. OKAY. AND IF YOU WOULD TURN TO PAGE 2 ON THE BOTTOM OF
02:00PM 8 THE EXHIBIT, YOU SEE THERE'S A SECTION IN THE RIGHT-HAND
02:00PM 9 COLUMN, STANDARD LABORATORY DIRECTOR RESPONSIBILITIES?

02:00PM 10 A. RIGHT.

02:00PM 11 Q. AND IF YOU LOOK DOWN AT C AND D, TAKE A MINUTE AND JUST
02:00PM 12 READ THOSE TWO PROVISIONS.

02:00PM 13 THE COURT: TO HIMSELF?

02:00PM 14 MS. WALSH: TO HIMSELF, YEAH.

02:00PM 15 (PAUSE IN PROCEEDINGS.)

02:00PM 16 THE WITNESS: YES.

02:00PM 17 BY MS. WALSH:

02:00PM 18 Q. OKAY. DOES THAT HELP YOU REMEMBER WHETHER THE CLIA
02:00PM 19 REGULATIONS ALLOWED YOU TO BE A PART-TIME LAB DIRECTOR?

02:00PM 20 A. YES.

02:00PM 21 Q. THEY DID; RIGHT?

02:00PM 22 A. YES.

02:00PM 23 Q. OKAY. AND THEY ALLOWED TO BE, OR ANYONE WHO WAS
02:00PM 24 QUALIFIED, TO BE A LAB DIRECTOR AT UP TO FIVE LABS; CORRECT?

02:00PM 25 A. YES.

02:00PM 1 Q. OKAY. AND YOU WERE A LAB DIRECTOR JUST FOR TWO; RIGHT?

02:00PM 2 A. YES.

02:00PM 3 Q. AT THE TIME?

02:00PM 4 A. YES.

02:00PM 5 Q. OKAY. AND WHAT THE CLIA REGS ALSO REQUIRED WAS THAT YOU

02:01PM 6 BE AVAILABLE BY TELEPHONE OR EMAIL; RIGHT?

02:01PM 7 A. YES.

02:01PM 8 Q. SO IF ANYONE HAD QUESTIONS, THEY COULD CALL YOU; RIGHT?

02:01PM 9 A. YES.

02:01PM 10 Q. AND YOU WERE AVAILABLE; RIGHT?

02:01PM 11 A. YES.

02:01PM 12 Q. YOU SAID THAT ON DIRECT, THAT YOU MADE SURE THAT THERANOS

02:01PM 13 KNEW THAT YOU WERE AVAILABLE?

02:01PM 14 A. YES.

02:01PM 15 Q. SO THERE WAS NO -- YOU WERE ALLOWED TO BE THERE PART-TIME;

02:01PM 16 RIGHT?

02:01PM 17 A. YES.

02:01PM 18 Q. AND YOU WERE ALLOWED TO WORK FOR UP TO FIVE DIFFERENT LABS

02:01PM 19 AS A LAB DIRECTOR; RIGHT?

02:01PM 20 A. YES.

02:01PM 21 Q. AND SO NO ONE WAS PRETENDING THAT YOU WERE THERE EVERY

02:01PM 22 SINGLE DAY AT THERANOS; RIGHT?

02:01PM 23 MR. SCHENK: OBJECTION. SPECULATION, FOUNDATION,

02:01PM 24 AND RELEVANCE.

02:01PM 25 THE COURT: SUSTAINED AS TO SPECULATION.

02:01PM 1 BY MS. WALSH:

02:01PM 2 Q. SO, DR. DHAWAN, YOU DIDN'T COME INTO THERANOS EVERY SINGLE

02:01PM 3 DAY; RIGHT?

02:01PM 4 A. YES.

02:01PM 5 Q. BUT YOU -- THAT WAS ALLOWED UNDER THE REGS; CORRECT?

02:02PM 6 MR. SCHENK: OBJECTION. LACKS RELEVANCE.

02:02PM 7 THE COURT: SUSTAINED.

02:02PM 8 BY MS. WALSH:

02:02PM 9 Q. OKAY. DR. DHAWAN, YOU'VE TESTIFIED THAT THE REGULATIONS

02:02PM 10 ALLOW YOU TO BE A PART-TIME LAB DIRECTOR; CORRECT?

02:02PM 11 A. YES.

02:02PM 12 Q. AND BEING A PART-TIME LAB DIRECTOR MEANS THAT YOU DON'T

02:02PM 13 HAVE TO COME INTO THE LAB EVERY DAY; CORRECT?

02:02PM 14 A. BASED ON WHAT IT SAYS HERE.

02:02PM 15 Q. OKAY.

02:02PM 16 A. IT SAYS YOU HAVE TO BE IN CONTACT.

02:02PM 17 Q. OKAY. NOW, WHILE YOU WERE NOT AT THE LAB, THERE WERE MANY

02:02PM 18 SCIENTISTS WORKING AT THERANOS AT THE TIME; RIGHT?

02:02PM 19 A. YES.

02:02PM 20 Q. YOU MET SOME OF THEM; CORRECT?

02:02PM 21 A. YES.

02:02PM 22 Q. AND YOU INTERACTED WITH SOME OF THEM; RIGHT?

02:02PM 23 A. YES.

02:02PM 24 Q. YOU SAID YOU -- I THINK YOU JUST SAID THAT YOU MET

02:02PM 25 DR. MASINDE?

02:02PM 1 A. YES.

02:02PM 2 Q. AND YOU HAD CONTACT WITH DR. SAKSENA REGARDING HIS

02:02PM 3 APPLICATION TO BE A LAB DIRECTOR; RIGHT?

02:02PM 4 A. YES.

02:02PM 5 Q. AND YOU SAID YOU ALSO MET DANIEL YOUNG; RIGHT?

02:02PM 6 A. YES.

02:02PM 7 Q. DR. YOUNG.

02:03PM 8 A. YES.

02:03PM 9 Q. OKAY. AND THESE WERE ALL PROFESSIONAL SCIENTISTS, WEREN'T

02:03PM 10 THEY?

02:03PM 11 A. YES, THEY ARE ALL PH.D.'S, YES.

02:03PM 12 Q. OKAY. AND IT WAS APPROPRIATE, WASN'T IT, FOR YOU TO RELY

02:03PM 13 ON THE WORK THAT THEY WERE DOING?

02:03PM 14 A. YES.

02:03PM 15 Q. OKAY. LET'S TAKE A LOOK AT EXHIBIT 4528, WHICH IS IN

02:03PM 16 EVIDENCE.

02:03PM 17 LET'S GO TO PAGE 7.

02:03PM 18 DO YOU HAVE THAT IN FRONT OF YOU DR. DHAWAN?

02:03PM 19 A. YES, YES.

02:03PM 20 Q. OKAY. AND THAT'S AN ORG CHART OF THE TOP LEVEL SCIENTISTS

02:04PM 21 WITHIN THE LAB; RIGHT?

02:04PM 22 A. YES.

02:04PM 23 Q. AND IT SHOWS DR. MASINDE, THE TOP TECHNICAL SUPERVISOR;

02:04PM 24 RIGHT?

02:04PM 25 A. YES.

02:04PM 1 Q. AND IT ALSO SHOWS LANGLEY GEE.

02:04PM 2 DO YOU REMEMBER HIM?

02:04PM 3 A. YES.

02:04PM 4 Q. OKAY. HE WAS THE QA/QC MANAGER; RIGHT?

02:04PM 5 A. YES.

02:04PM 6 Q. AND HE WORKED FULL TIME IN THE LAB; RIGHT?

02:04PM 7 A. YES.

02:04PM 8 Q. AND HODA ALAMDAR, DO YOU REMEMBER HER?

02:04PM 9 A. YES.

02:04PM 10 Q. AND SHE WAS THE TECHNICAL SUPERVISOR, OR A TECHNICAL

02:04PM 11 SUPERVISOR; RIGHT?

02:04PM 12 A. YES.

02:04PM 13 Q. AND GURBIR SIDHU, DO YOU REMEMBER HIM?

02:04PM 14 A. I RECALL MEETING HIM ONCE, YES.

02:04PM 15 Q. AND HE WAS THE GENERAL SUPERVISOR; RIGHT?

02:04PM 16 A. YES.

02:04PM 17 Q. AND SO IN DOING YOUR WORK -- AND WE'RE GOING TO LOOK AT

02:04PM 18 WHAT YOU DID IN A MINUTE -- BUT YOU RELIED ON THESE SCIENTISTS

02:04PM 19 WHO WERE WORKING FULL TIME IN THE LAB; CORRECT?

02:04PM 20 A. YES.

02:05PM 21 Q. AND THEN LET'S TAKE A LOOK AT THIS EXHIBIT AT SLIDE 12.

02:05PM 22 THESE ARE THE CREDENTIALS OF DR. DANIEL YOUNG.

02:05PM 23 DO YOU SEE THAT?

02:05PM 24 A. YES.

02:05PM 25 Q. AND HE WAS CURRENTLY AT THE TIME A LAB DIRECTOR; RIGHT?

02:05PM 1 A. YES.

02:05PM 2 Q. AND HE WAS THE LAB DIRECTOR OF ARIZONA?

02:05PM 3 A. YES.

02:05PM 4 Q. AND IT SAYS HE WAS INVOLVED AS AN EXECUTIVE AND SUPERVISOR

02:05PM 5 IN THE RESEARCH AND DEVELOPMENT OF A WIDE VARIETY OF CLINICAL

02:05PM 6 ASSAYS SPANNING MULTIPLE CATEGORIES OF TESTING.

02:05PM 7 DO YOU SEE THAT?

02:05PM 8 A. YES.

02:05PM 9 Q. AND THEN IT SAYS HE HAS AN ENGINEERING DOCTORATE FROM

02:05PM 10 M.I.T.

02:05PM 11 DO YOU SEE THAT?

02:05PM 12 A. YES.

02:05PM 13 Q. OKAY. AND THEN FURTHER DOWN IT DESCRIBES HIS DUTIES, AND

02:05PM 14 IT COVERED OVERSIGHT OF CLINICAL LABORATORY TESTING, QUALITY

02:06PM 15 AND PROFICIENCY TESTING.

02:06PM 16 DO YOU SEE THAT?

02:06PM 17 A. YES.

02:06PM 18 Q. IS IT SAYS, "HE HAS ALSO SUPERVISED VALIDATION OF TESTING

02:06PM 19 FOR ASSAY METHODS IN THE CATEGORIES OF CLINICAL CHEMISTRY,

02:06PM 20 HEMATOLOGY, IMMUNOASSAYS, AND MOLECULAR BIOLOGY INCLUDING

02:06PM 21 VERIFICATION AND VALIDATION," AND IT GOES ON.

02:06PM 22 DO YOU SEE THAT?

02:06PM 23 A. YES.

02:06PM 24 Q. AND SO YOU RELIED ON DR. YOUNG AS WELL, WHO WAS A

02:06PM 25 PROFESSIONAL SCIENTIST, IN YOUR WORK FOR THERANOS; RIGHT?

02:06PM 1 A. YES.

02:06PM 2 Q. OKAY. OKAY. LET'S TAKE A LOOK AT 10577.

02:07PM 3 DO YOU SEE THAT?

02:07PM 4 A. YES.

02:07PM 5 Q. OKAY. AND THIS DOCUMENT IS -- THIS WAS SIGNED BY YOU;

02:07PM 6 RIGHT?

02:07PM 7 A. YES.

02:07PM 8 Q. AND THIS IS A DELEGATION OF RESPONSIBILITIES BY YOU TO

02:07PM 9 OTHERS IN THE LAB; IS THAT RIGHT?

02:07PM 10 A. YES.

02:07PM 11 Q. OKAY. AND THIS IS ALLOWED UNDER THE CLIA REGULATIONS;

02:07PM 12 RIGHT?

02:07PM 13 A. YES.

02:07PM 14 Q. BECAUSE, AGAIN, YOU CAN'T BE THERE EVERY DAY; CORRECT?

02:07PM 15 A. YES.

02:07PM 16 Q. AND SO YOU WERE ALLOWED TO DELEGATE TO OTHER SCIENTISTS

02:07PM 17 SOME OF THE DUTIES THAT YOU HAVE AS THE LAB DIRECTOR; CORRECT?

02:07PM 18 A. YES.

02:07PM 19 Q. AND THIS IS ONE OF THOSE DOCUMENTS; RIGHT?

02:07PM 20 A. YES.

02:07PM 21 Q. OKAY. AND IT IS DATED SEPTEMBER 5TH, 2015; RIGHT?

02:07PM 22 A. YES.

02:07PM 23 MS. WALSH: YOUR HONOR, WE OFFER 10577.

02:07PM 24 MR. SCHENK: NO OBJECTION.

02:07PM 25 THE COURT: THIS IS THREE PAGES?

02:08PM 1 MS. WALSH: YES.

02:08PM 2 THE COURT: AND THEY'RE -- ARE THEY -- YOU'LL

02:08PM 3 DEVELOP THIS, BUT ARE THESE THREE SEPARATE DELEGATIONS?

02:08PM 4 THERE'S THREE DIFFERENT DATES ON THERE. I'LL ALLOW IT AND YOU

02:08PM 5 CAN PUBLISH, BUT MAYBE YOU CAN FLESH THAT OUT.

02:08PM 6 (DEFENDANT'S EXHIBIT 10577 WAS RECEIVED IN EVIDENCE.)

02:08PM 7 MS. WALSH: SURE.

02:08PM 8 THE COURT: AND I THOUGHT WE WOULD TAKE OUR

02:08PM 9 AFTERNOON BREAK IN ABOUT FIVE OR TEN MINUTES IF YOU WANT TO GO

02:08PM 10 AHEAD WITH THIS DOCUMENT.

02:08PM 11 MS. WALSH: OKAY.

02:08PM 12 Q. SO, DR. DHAWAN, LET'S LOOK AT THE FIRST PAGE.

02:08PM 13 AND THIS PAGE DESCRIBES THE QUALIFICATIONS AND DUTIES AND

02:08PM 14 RESPONSIBILITIES OF A LABORATORY SUPERVISOR/TECHNICAL

02:09PM 15 SUPERVISOR.

02:09PM 16 DO YOU SEE THAT?

02:09PM 17 A. YES.

02:09PM 18 Q. AND IT ESTABLISHES THAT THAT PERSON REPORTS TO THE LAB

02:09PM 19 DIRECTOR; RIGHT?

02:09PM 20 A. YES.

02:09PM 21 Q. OKAY. AND IT DESCRIBES IN DETAIL THE DUTIES AND

02:09PM 22 RESPONSIBILITIES OF THAT TECHNICAL SUPERVISOR.

02:09PM 23 DO YOU SEE THAT IN THE MIDDLE?

02:09PM 24 A. YES, YES.

02:09PM 25 Q. OKAY. AND WHAT IT SAYS IS THAT THE TECHNICAL SUPERVISOR

02:09PM 1 SHALL BE AVAILABLE TO LABORATORY TESTING PERSONNEL AT ALL TIMES
02:09PM 2 TO PROVIDE EITHER ON-SITE, TELEPHONE, OR ELECTRONIC
02:09PM 3 CONSULTATION.

02:09PM 4 DO YOU SEE THAT?

02:09PM 5 A. YES.

02:09PM 6 Q. "THE TECHNICAL SUPERVISOR IS RESPONSIBLE FOR THE
02:09PM 7 FOLLOWING."

02:09PM 8 AND I'M NOT GOING TO READ WORD FOR WORD EVERY ONE, BUT TO
02:09PM 9 SUMMARIZE, ONE IS THE DAY-TO-DAY SUPERVISION OF HIGH COMPLEXITY
02:09PM 10 TEST PERFORMANCE.

02:09PM 11 DO YOU SEE THAT?

02:09PM 12 A. YES.

02:09PM 13 Q. AND TWO IS REVIEW OF ALL RELEVANT DOCUMENTS AND
02:09PM 14 PROCEDURES; RIGHT?

02:09PM 15 A. YES.

02:09PM 16 Q. AND THREE IS PROVIDE REGULATORY ADVICE FOR COMPLIANCE;
02:09PM 17 RIGHT?

02:09PM 18 A. YES.

02:09PM 19 Q. AND FOUR IS ACT AS A LIAISON WITH REGULATORS; CORRECT?

02:10PM 20 A. YES.

02:10PM 21 Q. OKAY. SIX IS ATTEND ALL SCHEDULED QA MEETINGS TO PROVIDE
02:10PM 22 ADVICE ON COMPLIANCE AND QUALITY IMPROVEMENTS; RIGHT?

02:10PM 23 A. YES.

02:10PM 24 Q. SEVEN IS TRAIN, OBSERVE, AND DOCUMENT EMPLOYEES PERFORMING
02:10PM 25 WHAT GOES ON IN THE LAB; RIGHT?

02:10PM 1 A. YES.

02:10PM 2 Q. OKAY. AND THEN LET'S TURN TO THE NEXT PAGE.

02:10PM 3 IT SAYS, "THE LABORATORY DIRECTOR DELEGATES THE FOLLOWING

02:10PM 4 RESPONSIBILITIES TO THE TECHNICAL SUPERVISOR WHO HAS

02:10PM 5 SPECIALTIES IN HEMATOLOGY."

02:10PM 6 AND THE DELEGATION IS TO HODA ALAMDAR; RIGHT?

02:10PM 7 A. YES.

02:10PM 8 Q. AND THE FIRST PAGE THAT DESCRIBED THE DUTIES AND

02:10PM 9 RESPONSIBILITIES AND THE QUALIFICATIONS, THAT PAGE ALSO RELATED

02:10PM 10 TO HODA ALAMDAR; CORRECT?

02:11PM 11 A. YES.

02:11PM 12 Q. OKAY. AND WHAT IS BEING DELEGATED IS APPROPRIATE -- I'M

02:11PM 13 ON PAGE 2 -- APPROPRIATE TEST METHOD SELECTION; RIGHT?

02:11PM 14 A. YES.

02:11PM 15 Q. AND VERIFICATION; CORRECT?

02:11PM 16 A. YES.

02:11PM 17 Q. TO DETERMINE THE ACCURACY AND PRECISION OF THE TEST;

02:11PM 18 RIGHT?

02:11PM 19 A. YES.

02:11PM 20 Q. ENSURING THE DEVELOPMENT OF QUALITY ASSESSMENT AND QUALITY

02:11PM 21 CONTROL PROGRAMS; RIGHT?

02:11PM 22 A. YES.

02:11PM 23 Q. DEVELOPING REMEDIAL ACTIONS; CORRECT?

02:11PM 24 A. YES.

02:11PM 25 Q. AND IT GOES ON?

02:11PM 1 A. YES, YES.

02:11PM 2 Q. OKAY. AND PAGE 3 IS THE SAME THING, EXCEPT RELATED TO

02:11PM 3 IMMUNOLOGY AND CHEMISTRY.

02:11PM 4 ON PAGE 2 IT WAS IMMUNOLOGY.

02:11PM 5 DO YOU SEE THAT?

02:11PM 6 A. YES.

02:11PM 7 Q. AND FOR EACH ONE, HODA ALAMDAR SIGNS; RIGHT?

02:11PM 8 A. YES.

02:11PM 9 Q. AND YOU SIGNED AS THE LAB DIRECTOR; RIGHT?

02:11PM 10 A. YES.

02:11PM 11 Q. AND SO THOSE PROVISIONS ABOUT DOING QUALITY ASSURANCE AND

02:11PM 12 QUALITY CONTROL AND MAKING SURE THAT THAT IS GOING ON AND

02:12PM 13 REVIEWING IT, THAT WAS ALL DELEGATED TO HODA ALAMDAR, WASN'T

02:12PM 14 IT?

02:12PM 15 A. YES.

02:12PM 16 Q. OKAY. SO TO THE EXTENT THAT YOU DIDN'T REVIEW QC AND QA,

02:12PM 17 YOU HAD DELEGATED THOSE RESPONSIBILITIES TO A HIGHLY QUALIFIED

02:12PM 18 PERSON IN THE LAB; CORRECT?

02:12PM 19 A. YES.

02:12PM 20 Q. OKAY.

02:12PM 21 YOUR HONOR, THIS MIGHT BE A GOOD TIME TO BREAK.

02:12PM 22 THE COURT: OKAY. LET'S DO THAT, LADIES AND

02:12PM 23 GENTLEMEN. LET'S TAKE ABOUT 25, 30 MINUTES, LADIES AND

02:12PM 24 GENTLEMEN, FOR OUR AFTERNOON BREAK.

02:12PM 25 WE'RE GOING TO END AT 4:00 TODAY, PLEASE, 4:00. I'M

02:12PM 1 HOPING WE CAN END AT 4:00.

02:12PM 2 I JUST WANT TO GIVE YOU ADVANCED NOTICE, IF THE LAWYERS
02:12PM 3 ARE VERY CLOSE TO FINISHING AND IT GOES A LITTLE PAST 4:00, I'D
02:12PM 4 LIKE TO ACCOMPLISH THAT FOR ALL OF OUR CONVENIENCE, BUT I'M
02:12PM 5 QUITE CONFIDENT THAT WON'T BE THE CASE.

02:12PM 6 SO WE'LL SEE. HAVE A GOOD BREAK. THANK YOU.

02:12PM 7 (RECESS FROM 2:12 P.M. UNTIL 2:39 P.M.)

02:39PM 8 THE COURT: WE'RE BACK ON THE RECORD. ALL PARTIES
02:39PM 9 PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

02:39PM 10 MS. WALSH.

02:39PM 11 MS. WALSH: YES. THANK YOU, YOUR HONOR.

02:40PM 12 ALL RIGHT. MAY I INQUIRE, YOUR HONOR?

02:40PM 13 THE COURT: YES.

02:40PM 14 MS. WALSH: ALL RIGHT. THANK YOU.

02:40PM 15 Q. DR. DHAWAN, WELCOME BACK.

02:40PM 16 WE WERE JUST REVIEWING AN EXHIBIT 10577, AND THAT WAS THE
02:40PM 17 DELEGATION DOCUMENT, DELEGATION OF AUTHORITY DOCUMENT THAT YOU
02:40PM 18 AND I WERE JUST GOING OVER.

02:40PM 19 DO YOU REMEMBER THAT?

02:40PM 20 A. YES.

02:40PM 21 Q. OKAY. AND THAT DOCUMENT SETS OUT THE DELEGATIONS THAT WE
02:40PM 22 JUST WENT THROUGH IN DETAIL.

02:40PM 23 BUT YOU HAD BEEN DELEGATING YOUR AUTHORITY AS LAB DIRECTOR
02:40PM 24 SINCE YOU STARTED AT THERANOS AND YOU WERE ON THE CLIA
02:40PM 25 CERTIFICATE; IS THAT RIGHT?

02:40PM 1
02:40PM 2
02:40PM 3
02:40PM 4
02:40PM 5
02:41PM 6
02:41PM 7
02:41PM 8
02:41PM 9
02:41PM 10
02:41PM 11
02:41PM 12
02:41PM 13
02:41PM 14
02:41PM 15
02:41PM 16
02:41PM 17
02:41PM 18
02:41PM 19
02:41PM 20
02:41PM 21
02:42PM 22
02:42PM 23
02:42PM 24
02:42PM 25

A. YES.

Q. OKAY. AND YOU WERE DELEGATING TO THE INDIVIDUALS THAT WERE LISTED IN THAT DOCUMENT 10577 THAT WE JUST LOOKED AT?

A. YES.

Q. OKAY. NOW WE'RE GOING TO GO FORWARD TO THE SUMMER OF 2015.

AND THIS IS WHEN LANGLEY GEE, WHO WAS HEAD OF QUALITY CONTROL -- DO YOU REMEMBER THAT?

A. YES.

Q. AND HE REACHED OUT TO YOU AND SAID, DHAWAN, WE NEED YOU TO SIGN A FAIR NUMBER OF DOCUMENTS, AND YOU SUGGESTED, SEND THEM TO ME 50 AT A TIME.

DO YOU REMEMBER THAT?

A. YES.

Q. OKAY. AND THERE WAS NO LEGAL REQUIREMENT THAT YOU WERE AWARE THAT HE SEND YOU ALL OF THESE DOCUMENTS TO SIGN IN ADVANCE OF THE CMS AUDIT; CORRECT?

MR. SCHENK: OBJECTION. RELEVANCE, AND CALLS FOR A LEGAL CONCLUSION.

THE COURT: SUSTAINED AS TO A CONCLUSION.

BY MS. WALSH:

Q. OKAY. DR. DHAWAN, ARE YOU AWARE OF ANY REGULATION REQUIRING YOU TO SIGN ALL OF THE DOCUMENTS THAT YOU DID?

MR. SCHENK: YOUR HONOR, SAME OBJECTION.

THE COURT: AS TO THE FORM OF THE QUESTION.

02:42PM 1 DO YOU WANT TO ASK HIM AS TO HIS JOB DESCRIPTION OR SOME
02:42PM 2 OTHER WAY?

02:42PM 3 MS. WALSH: OKAY.

02:42PM 4 Q. SO WE'LL LOOK AT SOME OF THESE DOCUMENTS IN A MINUTE, BUT
02:42PM 5 YOU RECEIVED A FAIRLY LARGE NUMBER OF DOCUMENTS; RIGHT?

02:42PM 6 A. YES.

02:42PM 7 Q. AND THIS WAS IN ADVANCE OF THE CMS AUDIT; CORRECT?

02:42PM 8 A. YES.

02:42PM 9 Q. AND YOU WERE ASKED TO REVIEW THOSE DOCUMENTS; RIGHT?

02:42PM 10 A. YES.

02:42PM 11 Q. OTHERS HAD SIGNED THE DOCUMENTS BEFORE YOU DID; CORRECT?

02:42PM 12 A. YES.

02:42PM 13 Q. AND AT THE TIME THAT THE DOCUMENTS WERE WRITTEN, YOU WERE
02:42PM 14 NOT THE LAB DIRECTOR AT THERANOS; RIGHT?

02:42PM 15 A. YES.

02:42PM 16 Q. AND MANY OF THEM WERE SIGNED BY THE LAB DIRECTOR WHO WAS
02:42PM 17 THERE AT THE TIME; RIGHT?

02:42PM 18 A. YES.

02:42PM 19 Q. AND THAT WAS ADAM ROSENDORFF; RIGHT?

02:42PM 20 A. YES.

02:42PM 21 Q. AND YOUR SIGNING THESE DOCUMENTS WAS NOT REQUIRED UNDER
02:43PM 22 YOUR DUTIES AS A LAB DIRECTOR; IS THAT RIGHT?

02:43PM 23 MR. SCHENK: SAME OBJECTION.

02:43PM 24 THE COURT: SUSTAINED.

02:43PM 25 BY MS. WALSH:

02:43PM 1 Q. OKAY. IN ANY EVENT, DR. DHAWAN, DR. ROSENDORFF HAD
02:43PM 2 ALREADY APPROVED MANY OF THE DOCUMENTATION THAT YOU HAD
02:43PM 3 REVIEWED; IS THAT RIGHT?

02:43PM 4 A. YES.

02:43PM 5 Q. AND HE WAS A LAB DIRECTOR THAT WORKED FULL TIME AT
02:43PM 6 THERANOS; RIGHT?

02:43PM 7 A. YES.

02:43PM 8 Q. AND WHEN YOU REVIEWED AND SIGNED OFF ON THOSE DOCUMENTS
02:43PM 9 BASED ON THE WORK THAT HE HAD DONE, THAT GAVE YOU SOME COMFORT
02:43PM 10 IN PLACING YOUR SIGNATURE ON THOSE DOCUMENTS; CORRECT?

02:43PM 11 A. IF THEY WERE SIGNED PREVIOUSLY BY MULTIPLE PEOPLE, YES,
02:44PM 12 YOU'RE MORE CONFIDENT. YES.

02:44PM 13 Q. BECAUSE YOU'RE RELYING ON THE WORK THAT THEY HAD DONE;
02:44PM 14 RIGHT?

02:44PM 15 A. YES.

02:44PM 16 Q. AND THOSE PEOPLE -- AND WE CAN LOOK AT THE DOCUMENTS, BUT
02:44PM 17 YOUR RECOLLECTION IS THAT THOSE PEOPLE WERE SCIENTISTS; RIGHT?

02:44PM 18 A. YES.

02:44PM 19 Q. AND ONE OF THEM WAS DR. ADAM ROSENDORFF; CORRECT?

02:44PM 20 A. YES.

02:44PM 21 Q. WHO WAS A MEDICAL DOCTOR; RIGHT?

02:44PM 22 A. YES.

02:44PM 23 Q. AND HE WAS THE FULL-TIME LAB DIRECTOR AT THERANOS;
02:44PM 24 CORRECT?

02:44PM 25 A. YES.

02:44PM 1 Q. OKAY. SO LET'S LOOK AT A COUPLE OF THE ONES THAT YOU DID
02:44PM 2 SIGN DURING THAT SUMMER OF 2015.

02:44PM 3 TAKE A LOOK IN YOUR BINDER AT 9387.

02:44PM 4 AND 9387 IS IN EVIDENCE, YOUR HONOR. IF WE COULD PUBLISH
02:45PM 5 IT?

02:45PM 6 THE COURT: YES.

02:45PM 7 MS. WALSH: THANK YOU.

02:45PM 8 Q. DO YOU SEE THAT, DR. DHAWAN?

02:45PM 9 A. YES.

02:45PM 10 Q. AND THIS IS A VALIDATION REPORT FOR THE TPSA ELISA ASSAY
02:45PM 11 ON THE EDISON 3.X THERANOS SYSTEM; RIGHT?

02:45PM 12 A. YES.

02:45PM 13 Q. AND THAT REFERRED TO THERANOS TECHNOLOGY; RIGHT?

02:45PM 14 A. YES.

02:45PM 15 Q. AND THE VALIDATION REPORT WAS SIGNED BY MICHELLE JOHNSON;
02:45PM 16 RIGHT?

02:45PM 17 A. YES.

02:45PM 18 Q. SHE WAS AN IMMUNOASSAY RESEARCH ASSOCIATE ACCORDING TO THE
02:45PM 19 DOCUMENT?

02:45PM 20 A. YES.

02:45PM 21 Q. AND SHARADA SIVARAMAN, PH.D.

02:45PM 22 DO YOU SEE THAT?

02:45PM 23 A. YES.

02:45PM 24 Q. IMMUNOASSAY TEAM LEADER; RIGHT?

02:45PM 25 A. YES.

02:45PM 1 Q. AND DR. DANIEL YOUNG, WE'VE TALKED ABOUT HIM; RIGHT?

02:45PM 2 A. YES.

02:45PM 3 Q. AND DR. ADAM ROSENDORFF, WHO APPROVED -- WHO APPROVED THE
02:45PM 4 VALIDATION REPORT ON SEPTEMBER 30TH, 2013; CORRECT?

02:45PM 5 A. YES.

02:45PM 6 Q. AND THEN YOU PLACED YOUR SIGNATURE AFTER DR. ROSENDORFF'S
02:45PM 7 ON SEPTEMBER 19TH, 2015; CORRECT?

02:45PM 8 A. YES.

02:46PM 9 Q. OKAY. LET'S TURN TO 9941, DR. DHAWAN, IN YOUR BINDER.

02:46PM 10 A. YES.

02:46PM 11 Q. DO YOU SEE THAT YOU SIGNED THIS REPORT AS WELL?

02:46PM 12 A. YES.

02:46PM 13 Q. AND YOU SIGNED IT ON SEPTEMBER 19TH, 2015?

02:46PM 14 A. YES.

02:46PM 15 Q. AND THIS WAS AN SOP; CORRECT?

02:46PM 16 A. YES.

02:46PM 17 Q. AND WE'VE TALKED ABOUT SOP'S BEFORE IN THE LAB; RIGHT?

02:46PM 18 A. YES.

02:46PM 19 Q. AND THIS DIDN'T DIFFER FROM THE OTHERS THAT YOU SIGNED IN
02:46PM 20 FORM; RIGHT?

02:46PM 21 A. NO.

02:46PM 22 MS. WALSH: YOUR HONOR, WE OFFER 9941.

02:46PM 23 MR. SCHENK: NO OBJECTION.

02:46PM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:46PM 25 (DEFENDANT'S EXHIBIT 9941 WAS RECEIVED IN EVIDENCE.)

02:46PM 1 BY MS. WALSH:

02:46PM 2 Q. OKAY. SO LOOKING AT THE FIRST PAGE, THIS SOP WAS FOR

02:46PM 3 PROFICIENCY TESTING FOR THERANOS LAB-DEVELOPED TESTS

02:47PM 4 (IMMUNOASSAYS) .

02:47PM 5 DO YOU SEE THAT?

02:47PM 6 A. YES.

02:47PM 7 Q. AND AGAIN, LAB-DEVELOPED TESTS WERE TESTS THAT THERANOS

02:47PM 8 DEVELOPED IN HOUSE; RIGHT?

02:47PM 9 A. YES.

02:47PM 10 Q. AND SO THIS WAS THE PROFICIENCY TESTING FOR THOSE ASSAYS;

02:47PM 11 RIGHT?

02:47PM 12 A. YES.

02:47PM 13 Q. AND THE AUTHOR WAS DR. SAKSENA, WHO WE HAVE TALKED ABOUT;

02:47PM 14 CORRECT?

02:47PM 15 A. YES.

02:47PM 16 Q. AND HE WAS THE DIRECTOR OF ASSAY SYSTEMS.

02:47PM 17 THIS WAS THEN REVIEWED BY DANIEL YOUNG.

02:47PM 18 DO YOU SEE THAT?

02:47PM 19 A. YES.

02:47PM 20 Q. AND THEN IT WAS FINALLY SIGNED BY YOU IN SEPTEMBER OF

02:47PM 21 2015.

02:47PM 22 DO YOU SEE THAT?

02:47PM 23 A. YES.

02:47PM 24 Q. OKAY. AND LET'S GO TO PAGE 3 OF THE EXHIBIT.

02:48PM 25 AND THIS STATES THE PURPOSE OF THE SOP, AND IT SAYS, "THE

02:48PM 1 PURPOSE OF THIS PROPOSAL IS TO DEVISE AN ALTERNATIVE ASSESSMENT
02:48PM 2 PROTOCOL (AAP) FOR LABORATORY-DEVELOPED TESTS ON THE EDISON 3.5
02:48PM 3 IMMUNOASSAY INSTRUMENT."

02:48PM 4 DO YOU SEE THAT?

02:48PM 5 A. YES.

02:48PM 6 Q. AND THEN IT GIVES A GUIDELINE, "FOR NON-CMS REGULATED
02:48PM 7 TESTS OR THOSE WHICH LACK FDA CLEARANCE, COMMERCIAL OR EXTERNAL
02:48PM 8 PT PROGRAMS MAY NOT BE AVAILABLE FOR CERTAIN ANALYTES."

02:48PM 9 DO YOU SEE THAT?

02:48PM 10 A. YES.

02:48PM 11 Q. "IN SUCH INSTANCES, AN AAP WILL BE USED TO ENSURE ACCURACY
02:48PM 12 OF THE ONGOING TEST SYSTEM PERFORMANCE."

02:48PM 13 DO YOU SEE THAT?

02:48PM 14 A. YES.

02:48PM 15 Q. AND THEN THE SCOPE SAYS UNDER 2.1, "THE ALTERNATIVE
02:48PM 16 ASSESSMENT PROTOCOL (AAP) APPLIES TO ALL LABORATORY DEVELOPED
02:48PM 17 TESTS ON THE EDISON 3.5 INSTRUMENT AND WILL BE CONDUCTED EVERY
02:49PM 18 SIX MONTHS."

02:49PM 19 RIGHT?

02:49PM 20 A. YES.

02:49PM 21 Q. AND THIS WAS -- LET ME ASK IT AGAIN BECAUSE THAT WAS
02:49PM 22 CONFUSING.

02:49PM 23 THIS IS THE ALTERNATIVE ASSESSMENT PROTOCOL THAT YOU
02:49PM 24 SIGNED -- IN THE SOP THAT YOU SIGNED?

02:49PM 25 A. YES.

02:49PM 1 Q. OKAY. LET'S TURN NOW TO PAGE 6 OF THE EXHIBIT, AND THIS
02:49PM 2 IS THE REVISION HISTORY.
02:49PM 3 DO YOU SEE THAT?
02:49PM 4 SECTION 8 IS THE REVISION HISTORY?
02:49PM 5 A. YES.
02:49PM 6 Q. OKAY. AND YOU SEE HOW THERE'S AN EFFECTIVE DATE OF
02:49PM 7 NOVEMBER 26TH, 2013; RIGHT?
02:49PM 8 A. YES.
02:49PM 9 Q. AND THE INITIATOR OF THE DOCUMENT WAS ADAM ROSENDORFF.
02:49PM 10 DO YOU SEE THAT?
02:49PM 11 A. YES.
02:49PM 12 Q. OKAY. WE CAN TAKE THAT DOWN.
02:50PM 13 OKAY. IF YOU COULD, DR. DHAWAN, TURN TO 20467.
02:50PM 14 DO YOU SEE THAT?
02:50PM 15 A. YES.
02:50PM 16 Q. AND THIS IS A TEST PLAN FOR A VERIFICATION PLAN FOR THE
02:50PM 17 DREW3.
02:50PM 18 DO YOU SEE THAT?
02:50PM 19 A. YES.
02:50PM 20 Q. AND YOU SIGNED THIS DOCUMENT; RIGHT?
02:50PM 21 A. YES.
02:50PM 22 Q. AND YOU SIGNED IT ON NOVEMBER 15TH, 2015; RIGHT?
02:50PM 23 A. YES.
02:50PM 24 Q. AND THIS IS SIMILAR TO THE OTHER DOCUMENTS THAT YOU SIGNED
02:51PM 25 THAT WERE SENT TO YOU FROM THERANOS; IS THAT CORRECT?

02:51PM 1 A. YES.

02:51PM 2 Q. AND THERE ARE OTHER SIGNATURES ABOVE YOURS REVIEWING AND

02:51PM 3 AUTHORIZING THE DOCUMENT; IS THAT RIGHT?

02:51PM 4 A. YES.

02:51PM 5 MS. WALSH: OKAY. YOUR HONOR, WE OFFER 20467.

02:51PM 6 MR. SCHENK: NO OBJECTION.

02:51PM 7 THE COURT: IT IS ADMITTED AND IT MAY BE PUBLISHED.

02:51PM 8 (DEFENDANT'S EXHIBIT 20467 WAS RECEIVED IN EVIDENCE.)

02:51PM 9 BY MS. WALSH:

02:51PM 10 Q. SO ON THE FIRST PAGE YOU SEE IT'S A TEST PLAN.

02:51PM 11 DO YOU SEE THAT?

02:51PM 12 A. YES.

02:51PM 13 Q. AND UNDER THAT, IT SAYS VERIFICATION PLAN FOR DREW3, AN

02:51PM 14 AUTOMATED HEMATOLOGY ANALYZER?

02:51PM 15 A. YES.

02:51PM 16 Q. OKAY. SO LET'S TURN TO PAGE 3 OF THE EXHIBIT.

02:51PM 17 A. YES.

02:51PM 18 Q. AND PAGE 3.1.1 SAYS, "THE PURPOSE OF THIS TEST PLAN IS TO

02:51PM 19 DEFINE THE EXPERIMENTS AND SELECTION CRITERIA FOR VERIFICATION

02:51PM 20 OF THE COMPLETE BLOOD COUNT," THAT'S CBC, "WITHIN THE CLIA

02:52PM 21 INFRASTRUCTURE, USING DREW3" -- THAT'S A DEVICE; RIGHT?

02:52PM 22 A. YEAH.

02:52PM 23 Q. -- "AN AUTOMATED HEMATOLOGY ANALYZER."

02:52PM 24 DO YOU SEE THAT?

02:52PM 25 A. YES.

02:52PM 1 Q. OKAY. AND THEN IF WE LOOK AT THE SCOPE, 2.1.

02:52PM 2 "THIS PLAN APPLIES TO RUNNING DREW3, AN AUTOMATED

02:52PM 3 HEMATOLOGY ANALYZER FDA 510 CLEARED METHODOLOGY PER CLSI

02:52PM 4 RECOMMENDATION IN THERANOS CLINICAL LABORATORY."

02:52PM 5 DO YOU SEE THAT?

02:52PM 6 A. YES.

02:52PM 7 Q. OKAY. AND THERE'S A LOT OF TECHNICAL INFORMATION IN HERE

02:52PM 8 THAT WE WON'T GO THROUGH, BUT I DO WANT YOU TO TURN TO PAGE 10.

02:52PM 9 ARE YOU ON PAGE 10?

02:52PM 10 A. YES.

02:52PM 11 Q. AND AT THE TOP IT SAYS, "VERIFICATION REPORT, VERIFICATION

02:52PM 12 OF DREW3 FOR COMPLETE BLOOD COUNT."

02:52PM 13 DO YOU SEE THAT?

02:52PM 14 A. YES.

02:52PM 15 Q. AND THE ORIGINATOR IS A PERSON NAMED POORNIMA KOLHAR.

02:53PM 16 DO YOU SEE THAT?

02:53PM 17 A. YES.

02:53PM 18 Q. AND THE DATE THAT THIS ORIGINATED WAS AUGUST 30TH, 2014;

02:53PM 19 CORRECT?

02:53PM 20 A. YES.

02:53PM 21 Q. OKAY. JUST A COUPLE MORE ON THESE. IF YOU COULD TURN TO

02:53PM 22 9369.

02:53PM 23 DO YOU SEE THAT?

02:53PM 24 A. YES.

02:53PM 25 Q. AND THIS IS ANOTHER VALIDATION DOCUMENT; RIGHT?

02:53PM 1 A. YES.

02:53PM 2 Q. AND IT'S FOR TSH; RIGHT?

02:53PM 3 A. YES.

02:53PM 4 Q. YOU SIGNED THE DOCUMENT?

02:53PM 5 A. YES.

02:53PM 6 Q. AND THE DATE IS NOVEMBER 15TH, 2015; IS THAT CORRECT,

02:54PM 7 DR. DHAWAN?

02:54PM 8 A. YES.

02:54PM 9 Q. AND YOUR SIGNATURE FOLLOWS A SERIES OF OTHER SIGNATURES BY

02:54PM 10 THERANOS EMPLOYEES; CORRECT?

02:54PM 11 A. YES.

02:54PM 12 MS. WALSH: YOUR HONOR, WE OFFER 9369.

02:54PM 13 MR. SCHENK: NO OBJECTION.

02:54PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:54PM 15 (DEFENDANT'S EXHIBIT 9369 WAS RECEIVED IN EVIDENCE.)

02:54PM 16 BY MS. WALSH:

02:54PM 17 Q. OKAY. AND JUST QUICKLY ON THIS ONE.

02:54PM 18 DR. DHAWAN, ON THE TOP IT INDICATES IT'S A TSH ELISA ASSAY

02:54PM 19 REPORT.

02:54PM 20 DO YOU SEE THAT?

02:54PM 21 A. YES.

02:54PM 22 Q. AND IT'S A VALIDATION REPORT ON THE EDISON 3.5 THERANOS

02:54PM 23 SYSTEM; RIGHT?

02:54PM 24 A. YES.

02:54PM 25 Q. AND THAT'S ONE OF THE THERANOS DEVICES; CORRECT?

02:54PM 1 A. YES.

02:54PM 2 Q. AND THEN IT'S AUTHORED BY MICHELLE JOHNSON; RIGHT?

02:54PM 3 A. YES.

02:54PM 4 Q. APPROVED BY DR. SIVARAMAN; CORRECT?

02:54PM 5 A. YES.

02:54PM 6 Q. DR. YOUNG; RIGHT?

02:54PM 7 A. YES.

02:54PM 8 Q. AND GURBIR SIDHU; CORRECT?

02:54PM 9 A. YES.

02:54PM 10 Q. AND, OF COURSE, YOU APPROVED IT AS WELL AS THE LAB

02:55PM 11 DIRECTOR; CORRECT?

02:55PM 12 A. YES.

02:55PM 13 Q. OKAY. AND JUST A COUPLE MORE THINGS I WANT TO POINT OUT.

02:55PM 14 ON PAGE 2 UNDER SUMMARY, IT SAYS -- THE VALIDATION REPORT

02:55PM 15 SAYS, "THERANOS HAS EVALUATED THE USE OF THERANOS SYSTEM 3.5

02:55PM 16 PLATFORM FOR THYROID STIMULATING HORMONE, (TSH). THE

02:55PM 17 VALIDATION REPORT WAS PREPARED BY MICHELLE JOHNSON ON

02:55PM 18 SEPTEMBER 23RD, 2013."

02:55PM 19 DO YOU SEE THAT?

02:55PM 20 A. YES.

02:55PM 21 Q. AND IN THE CHART ON PAGE 2 IT SAYS, "THE ACCURACY WAS

02:55PM 22 DETERMINED BY TESTING 92 UNIQUE PATIENT SAMPLES USING THE

02:55PM 23 EDISON 3.5 METHOD AND THE PREDICATE METHOD," AND THEN IT GOES

02:55PM 24 THROUGH A COMPARISON.

02:55PM 25 DO YOU SEE THAT?

02:55PM 1 A. YES.

02:55PM 2 Q. OKAY. IF YOU COULD TURN TO 9962.

02:56PM 3 DO YOU SEE THAT?

02:56PM 4 A. YES.

02:56PM 5 Q. OKAY. AND IS YOUR SIGNATURE ON 9962?

02:56PM 6 A. IT'S AT THE BOTTOM, YES.

02:56PM 7 Q. IT'S AT THE VERY BOTTOM?

02:56PM 8 A. YES.

02:56PM 9 Q. OKAY. NEXT TO SEPTEMBER 19TH, 2015?

02:56PM 10 A. UH-HUH.

02:56PM 11 Q. OKAY. AND YOU'RE SIGNING QUALITY SYSTEMS MANUAL.

02:56PM 12 DO YOU SEE THAT?

02:56PM 13 A. YES.

02:56PM 14 Q. AND THAT'S IN CONNECTION WITH THE OPERATION OF A LAB;

02:56PM 15 CORRECT?

02:56PM 16 A. YES.

02:56PM 17 Q. AND IT'S AFTER ALL OF THESE OTHER THERANOS EMPLOYEES HAVE

02:56PM 18 SIGNED; RIGHT?

02:56PM 19 A. YES.

02:56PM 20 MS. WALSH: OKAY. YOUR HONOR, WE OFFER 9962.

02:56PM 21 MR. SCHENK: NO OBJECTION.

02:56PM 22 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:56PM 23 (DEFENDANT'S EXHIBIT 9962 WAS RECEIVED IN EVIDENCE.)

02:56PM 24 BY MS. WALSH:

02:56PM 25 Q. OKAY. AND AGAIN, WE'RE SEEING MORE OF THE SAME THING, BUT

02:57PM 1 A SERIES OF SCIENTISTS SIGNED THIS REPORT; CORRECT?

02:57PM 2 A. YES.

02:57PM 3 Q. AND THEN YOU SIGNED YOUR NAME AT THE END; RIGHT?

02:57PM 4 A. YES.

02:57PM 5 Q. AND YOU WERE RELYING ON THE WORK THAT THEY HAD PREVIOUSLY

02:57PM 6 DONE?

02:57PM 7 A. YES.

02:57PM 8 Q. OKAY. AND IF WE LOOK AT PAGE 35 OF THIS REPORT, YOU SEE

02:57PM 9 ALL OF THAT REVISION HISTORY?

02:57PM 10 A. YES.

02:57PM 11 Q. OKAY. IS IT FAIR TO SAY THAT, BASED ON YOUR EXPERIENCE IN

02:57PM 12 SIGNING THESE REPORTS, THERE WERE MANY REVISIONS OF THE REPORTS

02:57PM 13 BY VARIOUS DIFFERENT PEOPLE; CORRECT?

02:57PM 14 A. WHATEVER IS LISTED, YES.

02:57PM 15 Q. YEAH. AND THESE WERE FULL-TIME THERANOS EMPLOYEES; RIGHT?

02:57PM 16 A. YES.

02:57PM 17 Q. AND THE REVISIONS JUST REPRESENT ITERATIONS OF THE REPORT

02:57PM 18 OVER TIME; IS THAT FAIR?

02:57PM 19 A. YES.

02:57PM 20 Q. OKAY. OKAY. SO, DR. DHAWAN, YOU ALSO TESTIFIED ABOUT

02:58PM 21 YOUR INVOLVEMENT IN THE CMS INSPECTION IN THE FALL OF 2015.

02:58PM 22 DO YOU REMEMBER THAT?

02:58PM 23 A. YES.

02:58PM 24 Q. AND THAT TOOK PLACE AT THERANOS; RIGHT?

02:58PM 25 A. YES.

02:58PM 1 Q. AND YOU WERE INVOLVED FOR A COUPLE OF HOURS AT THE
02:58PM 2 BEGINNING OF THE INSPECTION; CORRECT?

02:58PM 3 A. YES.

02:58PM 4 Q. BUT OTHER SCIENTISTS FROM THERANOS WERE THERE; RIGHT?

02:58PM 5 A. YES.

02:58PM 6 Q. MR. BALWANI WAS THERE; CORRECT?

02:58PM 7 A. YES.

02:58PM 8 Q. AND THERE WAS DISCUSSION BETWEEN CMS AND THE OTHER
02:58PM 9 SCIENTISTS IN THE ROOM; RIGHT?

02:58PM 10 A. YES.

02:58PM 11 Q. OKAY. AND LET'S TAKE A LOOK AT AN EXHIBIT THAT YOU LOOKED
02:58PM 12 AT ON DIRECT. IT'S 2760. AND IF WE CAN TURN TO PAGE 2 OF THE
02:59PM 13 EXHIBIT.

02:59PM 14 THIS IS WHERE MR. BALWANI WAS TELLING YOU, WE HAVE A LAB
02:59PM 15 AUDIT COMING UP ON 9/22?

02:59PM 16 A. YES.

02:59PM 17 Q. AND HE SAID HE HAD A VERY CAPABLE TEAM THAT IS TAKING CARE
02:59PM 18 OF ALL OF THE DETAILS; RIGHT?

02:59PM 19 A. YES.

02:59PM 20 Q. AND TOWARDS THE BOTTOM OF THAT PARAGRAPH HE SAYS, "WE HAVE
02:59PM 21 HIRED MANY EXPERTS FROM THE INDUSTRY TO MAKE SURE LAB IS
02:59PM 22 FLAWLESS AND AUDIT READY, SO I DON'T ANTICIPATE ANY HICCUPS."

02:59PM 23 DO YOU SEE THAT?

02:59PM 24 A. YES.

02:59PM 25 Q. OKAY. AND DO YOU RECALL THAT IN ADVANCE OF THE CMS AUDIT,

02:59PM 1 THERANOS HAD BEEN WORKING WITH A CONSULTING FIRM TO PREPARE FOR
02:59PM 2 IT?

02:59PM 3 A. I DON'T SPECIFICALLY RECALL THAT. I'D HAVE TO LOOK BACK
03:00PM 4 AT THE RECORDS, BUT I DON'T RECALL THAT.

03:00PM 5 Q. SURE. SO WHY DON'T YOU TAKE A LOOK AT THE SMALLER BINDER
03:00PM 6 THAT YOU HAVE.

03:00PM 7 AND IF YOU WOULD LOOK AT 28408 AND TURN TO PAGE 3819, AND
03:00PM 8 IF YOU COULD READ LINES 5 THROUGH 10 ON PAGE 3819 TO YOURSELF.

03:01PM 9 A. YES.

03:01PM 10 Q. DOES THAT REFRESH YOUR RECOLLECTION THAT THERANOS WAS
03:01PM 11 WORKING WITH A CONSULTING COMPANY?

03:01PM 12 A. YES.

03:01PM 13 Q. OKAY. AND THAT WAS TO PREPARE FOR THE AUDIT; RIGHT?

03:01PM 14 A. YES.

03:01PM 15 Q. AND TO MAKE SURE EVERYTHING WAS IN PLACE FOR THE AUDITORS;
03:01PM 16 CORRECT?

03:01PM 17 A. YES.

03:01PM 18 Q. OKAY.

03:01PM 19 THE COURT: DID YOU ANSWER THAT QUESTION?

03:01PM 20 THE WITNESS: YES.

03:01PM 21 BY MS. WALSH:

03:01PM 22 Q. AND YOU YOURSELF HAD BEEN THROUGH THESE AUDITS BEFORE;
03:01PM 23 RIGHT?

03:01PM 24 A. YES.

03:01PM 25 Q. AT YOUR OWN LAB?

03:01PM 1 A. YES.

03:01PM 2 Q. AND SO IN THE MONTHS LEADING UP TO THIS AUDIT, YOU MADE

03:01PM 3 SOME TRIPS TO THERANOS; RIGHT?

03:01PM 4 A. YES.

03:01PM 5 Q. AND THE -- WHEN YOU ARRIVED AT THERANOS, THE SCIENTISTS

03:01PM 6 SHOWED YOU -- DID A WALKTHROUGH WITH YOU OF THE LAB; CORRECT?

03:01PM 7 A. YES.

03:01PM 8 Q. AND MR. BALWANI WAS THERE; RIGHT?

03:01PM 9 A. YES.

03:01PM 10 Q. BUT OTHER SCIENTISTS WERE THERE?

03:01PM 11 A. YES.

03:01PM 12 Q. AND YOU FOUND THE WALKTHROUGH HELPFUL; RIGHT?

03:01PM 13 A. INFORMATIVE, YES.

03:02PM 14 Q. AND YOU ALSO TESTIFIED ABOUT A PRESENTATION THAT WAS SHOWN

03:02PM 15 DURING THE CMS AUDIT.

03:02PM 16 DO YOU REMEMBER THAT?

03:02PM 17 A. I DON'T RECALL THE EXACT PRESENTATION. I WAS THERE, BUT

03:02PM 18 I'M NOT SURE WHETHER THERE WAS A SLIDE SHOW ON NOT, BUT THERE

03:02PM 19 WAS SOME PRESENTATION MADE, YES.

03:02PM 20 Q. OKAY. SO LET'S TAKE A LOOK AT THE PRESENTATION, WHICH IS

03:02PM 21 IN EVIDENCE, 4528.

03:02PM 22 WE LOOKED AT THIS BEFORE.

03:02PM 23 BUT I WANT TO DRAW YOUR ATTENTION TO PAGE 2.

03:03PM 24 AND DO YOU SEE THAT MAP THERE?

03:03PM 25 A. YES.

03:03PM 1 Q. OKAY. AND THAT MAP -- WELL, WHAT IT SAYS, THE SLIDE
03:03PM 2 SAYS -- AND THIS WAS PRESENTED TO CMS; RIGHT?

03:03PM 3 A. YES.

03:03PM 4 Q. OKAY. WHAT THE SLIDE SAYS IS, "COLLECTION SITES.

03:03PM 5 "THERANOS'S PATIENT SERVICE CENTERS ARE CURRENTLY LOCATED
03:03PM 6 IN CALIFORNIA, ARIZONA, AND PENNSYLVANIA."

03:03PM 7 RIGHT?

03:03PM 8 A. YES.

03:03PM 9 Q. AND THE MAP INDICATES THAT THERE'S ONE PATIENT SERVICE
03:03PM 10 CENTER IN CALIFORNIA; RIGHT?

03:03PM 11 A. YES.

03:03PM 12 Q. AND 42 PATIENT SERVICE CENTERS IN ARIZONA; RIGHT?

03:03PM 13 A. YES.

03:03PM 14 Q. AND YOU KNEW THAT THERANOS OPENED A LAB IN ARIZONA TO
03:03PM 15 SERVICE THOSE PATIENT SERVICE CENTERS; CORRECT?

03:03PM 16 A. YES.

03:03PM 17 Q. AND DR. YOUNG WAS THE LAB DIRECTOR OF THAT LAB; RIGHT?

03:03PM 18 A. YES.

03:03PM 19 Q. OKAY. AND DURING THE COURSE OF THE CMS AUDIT, THE PART
03:04PM 20 THAT YOU WERE THERE FOR --

03:04PM 21 A. YES.

03:04PM 22 Q. -- ONE OF THE REGULATORS MADE COMMENTS ABOUT HOW CMS WAS
03:04PM 23 UNDER PRESSURE TO INSPECT THERANOS BECAUSE REPORTERS WERE
03:04PM 24 MAKING INQUIRIES.

03:04PM 25 DO YOU REMEMBER THAT?

03:04PM 1 MR. SCHENK: OBJECTION. HEARSAY.

03:04PM 2 THE COURT: SUSTAINED.

03:04PM 3 BY MS. WALSH:

03:04PM 4 Q. OKAY. LET ME TURN TO ANOTHER TOPIC THEN.

03:04PM 5 OKAY. SO YOU TESTIFIED ON DIRECT, DR. DHAWAN, TO -- ABOUT
03:05PM 6 AN EXHIBIT THAT THE GOVERNMENT SHOWED YOU THAT HAD SOME
03:05PM 7 COMPLAINTS, SOME PATIENT COMPLAINTS, AND A BIG SPREADSHEET.

03:05PM 8 DO YOU REMEMBER SEEING THAT?

03:05PM 9 A. YES.

03:05PM 10 Q. AND THE GOVERNMENT POINTED OUT THREE DIFFERENT COMPLAINTS
03:05PM 11 IN THAT SPREADSHEET.

03:05PM 12 DO YOU REMEMBER THAT?

03:05PM 13 A. YES.

03:05PM 14 Q. OKAY. AND YOU DIDN'T SEE IN THAT SPREADSHEET WHETHER
03:05PM 15 THERE WAS ANY INVESTIGATION OF THOSE COMPLAINTS, DID YOU?

03:05PM 16 A. I DON'T RECALL SEEING THAT IN THERE, NO, I DON'T.

03:05PM 17 Q. OKAY. THERE WASN'T A SUMMARY OF THE QC DATA THAT WAS
03:05PM 18 REFERRED TO IN THAT SPREADSHEET; RIGHT?

03:05PM 19 A. I DON'T RECALL -- I DIDN'T SEE THAT, NO.

03:05PM 20 Q. OKAY. AND THERE WASN'T INVESTIGATIVE STEPS THAT WERE LAID
03:05PM 21 OUT IN THAT SPREADSHEET; RIGHT?

03:05PM 22 A. YEAH, NO, I DIDN'T SEE THAT.

03:05PM 23 Q. IT WAS JUST THE COMPLAINTS THEMSELVES; CORRECT?

03:05PM 24 A. YES.

03:05PM 25 Q. AND THERE WAS ALSO NO INDICATION ONE WAY OR ANOTHER

03:06PM 1 WHETHER THE COMPLAINTS HAD BEEN RESOLVED; RIGHT?

03:06PM 2 A. I DIDN'T SEE ANY RESOLUTION IN THAT DOCUMENT, NO.

03:06PM 3 Q. OKAY. AND THE DOCUMENT DIDN'T CONTAIN ANY DATA FROM THE

03:06PM 4 SYSTEMS WITHIN THERANOS; RIGHT?

03:06PM 5 A. I DON'T RECALL. NO, IT DIDN'T SEEM TO SHOW ANYTHING OTHER

03:06PM 6 THAN THE COMPLAINT.

03:06PM 7 Q. OKAY.

03:06PM 8 MS. WALSH: MAY I HAVE A MOMENT, YOUR HONOR?

03:06PM 9 THE COURT: YES.

03:06PM 10 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

03:07PM 11 BY MS. WALSH:

03:07PM 12 Q. OKAY. DR. DHAWAN, JUST ONE MORE QUESTION ABOUT THAT CMS

03:07PM 13 AUDIT WHERE YOU WERE PRESENT.

03:07PM 14 WAS THERE DISCUSSION ABOUT CMS BEING UNDER PRESSURE IN THE

03:07PM 15 ROOM?

03:07PM 16 MR. SCHENK: YOUR HONOR, SAME OBJECTION.

03:07PM 17 THE COURT: SUSTAINED.

03:07PM 18 MS. WALSH: YOUR HONOR, THESE ARE STATEMENTS BY A

03:07PM 19 PARTY OPPONENT. THIS IS THE GOVERNMENT MAKING THOSE

03:07PM 20 STATEMENTS, SO --

03:07PM 21 THE COURT: SUSTAINED.

03:07PM 22 MS. WALSH: OKAY. I HAVE NOTHING FURTHER,

03:07PM 23 YOUR HONOR.

03:08PM 24 THE COURT: REDIRECT?

03:08PM 25 ///

REDIRECT EXAMINATION

BY MR. SCHENK:

Q. GOOD AFTERNOON, DR. DHAWAN.

A. GOOD AFTERNOON.

Q. I'D LIKE TO FOLLOW UP ON A FEW TOPICS THAT YOU DISCUSSED WITH MS. WALSH, AND THE FIRST IS TO GET SOME GENERAL CLARIFICATION REGARDING INSTANCES WHEN YOU WERE ANSWERING HER QUESTIONS, BUT MAKING ASSUMPTIONS.

AND BY THAT I MEAN, FOR INSTANCE, MS. WALSH ASKED YOU IF CERTAIN EMPLOYEES WERE FULL TIME, LIKE I THINK ONE OF THE EXAMPLES WAS ADAM ROSENDORFF, AND I THINK YOU TESTIFIED THAT HE WAS.

HOW DO YOU KNOW THAT?

A. I ASSUME, WHEN I WAS TOLD THAT HE WAS A FULL-TIME EMPLOYEE, THAT MEANT HE WAS A FULL-TIME EMPLOYEE. BUT I WASN'T -- I DIDN'T SEE HIS EMPLOYMENT RECORDS, SO --

Q. AND HAVE YOU MEANT DR. ROSENDORFF?

A. NO, I HAVE NOT.

Q. THERE WERE INSTANCES WHEN MS. WALSH SAID YOU SIGNED VALIDATION REPORTS AND YOUR SIGNATURE WAS THE LAST SIGNATURE, SO YOU WERE RELYING ON THE WORK OF THE INDIVIDUALS WHO HAD SIGNED IT BEFORE YOU.

DO YOU RECALL THOSE QUESTIONS?

A. YES.

Q. OKAY. AND I THINK SHE TALKED TO YOU ABOUT SOME OF THEIR

03:09PM 1 EDUCATIONAL BACKGROUND, SOME WERE PH.D.'S.

03:09PM 2 DO YOU RECALL THAT?

03:09PM 3 A. YES.

03:09PM 4 Q. AND WHEN YOU SAY YOU WERE RELYING ON THEIR WORK, WERE YOU
03:09PM 5 MAKING AN ASSUMPTION THAT THEY HAD DONE GOOD QUALITY WORK?

03:09PM 6 A. YES, BECAUSE THEY HAD SIGNED THE DOCUMENTS.

03:09PM 7 Q. BUT HAD YOU EVER SPOKEN TO THEM ABOUT THE UNDERLYING
03:09PM 8 SUBSTANCE OF THE WORK THAT THEY DID OR THE DOCUMENT THAT YOU
03:09PM 9 WERE SIGNING?

03:09PM 10 A. I HAD NO WAY TO ANSWER THAT QUESTION.

03:09PM 11 THE COURT: DOCTOR, COULD YOU BRING THAT MICROPHONE
03:09PM 12 DOWN?

03:09PM 13 THE WITNESS: SORRY.

03:09PM 14 THE COURT: MAYBE BEND IT DOWN. I WISH THEY WERE
03:09PM 15 PARABOLIC.

03:09PM 16 THE WITNESS: NO, THAT'S OKAY.

03:09PM 17 I DIDN'T HAVE AN OPPORTUNITY TO ASK THEM THOSE QUESTIONS.
03:09PM 18 BY MR. SCHENK:

03:09PM 19 Q. YOU SAID THAT YOU HAD DELEGATED SOME RESPONSIBILITIES TO
03:10PM 20 THE TECHNICAL SUPERVISOR AND OTHER INDIVIDUALS.

03:10PM 21 DO YOU RECALL THAT LINE OF QUESTIONING?

03:10PM 22 A. YES.

03:10PM 23 Q. AND I'M WONDERING IF YOU MADE AN ASSUMPTION THAT SOMEONE
03:10PM 24 WOULD LET YOU KNOW IF THERE WERE PROBLEMS, IF THERE WERE
03:10PM 25 QUALITY PROBLEMS, OR ACCURACY PROBLEMS.

03:10PM 1 WHEN YOU WERE LAB DIRECTOR AT THERANOS, DID YOU ASSUME

03:10PM 2 THAT SOMEONE WOULD LET YOU KNOW IF THERE WERE SUCH PROBLEMS?

03:10PM 3 A. YES, THAT'S GENERALLY THEIR JOB.

03:10PM 4 Q. AND WHO WAS YOUR POINT OF CONTACT AT THERANOS?

03:10PM 5 A. SUNNY. MR. BALWANI, I'M SORRY.

03:10PM 6 Q. AND NOW I'D LIKE TO GO THROUGH A FEW OF THE DOCUMENTS THAT

03:10PM 7 YOU TALKED TO MS. WALSH ABOUT.

03:10PM 8 CAN WE START WITH 20064. THAT WAS ADMITTED.

03:10PM 9 THE COURT: OH, WE NEED TO TURN THE MONITORS BACK ON

03:10PM 10 I THINK.

03:10PM 11 THE WITNESS: YES.

03:10PM 12 THE COURT: THERE WE GO.

03:10PM 13 BY MR. SCHENK:

03:10PM 14 Q. DOCTOR, DO YOU RECALL DISCUSSING THIS EMAIL WITH

03:11PM 15 MS. WALSH?

03:11PM 16 A. YES.

03:11PM 17 Q. AND THERE'S AN EMAIL AT THE BOTTOM FROM DR. SAKSENA TO YOU

03:11PM 18 ASKING IF YOU'LL WRITE A LETTER, OR SIGN A LETTER.

03:11PM 19 DO YOU RECALL THAT?

03:11PM 20 A. YES.

03:11PM 21 Q. AND WHAT'S THE DATE OF THIS REQUEST FROM DR. SAKSENA?

03:11PM 22 A. 10-7-2015.

03:11PM 23 Q. I'M SORRY, THE --

03:11PM 24 A. 10-7-2015 -- OH, AT THE BOTTOM IT IS 10-6. 10-6.

03:11PM 25 Q. SO THE EMAIL WAS WRITTEN TO YOU ON OCTOBER 6, 2015?

03:11PM 1 A. YES.

03:11PM 2 Q. WOULD YOU NOW TURN TO 20067?

03:11PM 3 A. YES.

03:11PM 4 Q. IS THIS THE LETTER THAT YOU WROTE?

03:11PM 5 A. YES.

03:11PM 6 Q. WHAT IS THE DATE?

03:11PM 7 A. OCTOBER 6TH, 2015.

03:11PM 8 Q. IS THAT THE SAME DATE THAT DR. SAKSENA MADE THE REQUEST?

03:11PM 9 A. YES.

03:11PM 10 Q. DID, IN FACT, SOMEONE GIVE YOU THIS LETTER AND ASK YOU TO

03:11PM 11 SIGN IT?

03:11PM 12 A. YES, THAT'S USUALLY THE WAY THIS IS DONE.

03:11PM 13 Q. SO THIS WAS LIKE THE BIG STACK OF VALIDATION REPORTS, YOU

03:11PM 14 WERE GIVEN THEM AND ASKED TO SIGN?

03:12PM 15 A. YES, SOMEBODY CREATES THEM AND YOU REVIEW THEM AND SIGN

03:12PM 16 THEM.

03:12PM 17 Q. OKAY. THERE ARE STATEMENTS IN THE CONTENT, IN THE BODY OF

03:12PM 18 THIS LETTER.

03:12PM 19 A. YES.

03:12PM 20 Q. WERE YOU ASSUMING THAT THESE WERE ALL TRUE?

03:12PM 21 A. YES.

03:12PM 22 Q. THERE IS A -- I THINK THE QUESTIONS THAT MS. WALSH WAS

03:12PM 23 ASKING YOU DURING THIS TIME WERE DID YOU UNDERSTAND THAT THERE

03:12PM 24 WAS SOME HOPE THAT DR. SAKSENA MIGHT BECOME A LAB DIRECTOR.

03:12PM 25 IS THAT RIGHT? DO YOU REMEMBER THAT LINE OF QUESTIONING?

03:12PM 1 A. YES.

03:12PM 2 Q. AND IT TALKS ABOUT IN HERE AN APPLICATION TO BECOME A

03:12PM 3 CLINICAL CHEMIST?

03:12PM 4 A. YES.

03:12PM 5 Q. IS THAT RIGHT?

03:12PM 6 A. YES.

03:12PM 7 Q. IN FACT, HAD YOU BEEN LAB DIRECTOR AT THERANOS SINCE

03:12PM 8 NOVEMBER OR DECEMBER, DEPENDING ON WHICH DOCUMENT WE LOOK AT --

03:12PM 9 A. YES.

03:12PM 10 Q. -- FROM 2014? IS THAT RIGHT?

03:12PM 11 A. YES.

03:12PM 12 Q. SO THIS WORK WITH SIGNING A LETTER ON DR. SAKSENA'S BEHALF

03:12PM 13 WAS, IN FACT, TEN MONTHS AFTER YOU WERE THERE; IS THAT RIGHT?

03:12PM 14 A. I WAS STILL -- THIS WAS RIGHT AFTER THE CMS AUDIT, SO IT'S

03:13PM 15 AROUND THE SAME TIME. THE CMS AUDIT WAS ABOUT THAT TIME.

03:13PM 16 Q. AND YOU WERE EMAILING WITH MR. BALWANI TO BECOME LAB

03:13PM 17 DIRECTOR IN NOVEMBER OF 2014; IS THAT RIGHT?

03:13PM 18 A. '14, YES.

03:13PM 19 Q. OKAY. MS. WALSH SHOWED YOU SOME DOCUMENTS THAT HAD

03:13PM 20 SOMEONE NAMED LYNETTE SAWYER'S SIGNATURE ON THEM?

03:13PM 21 A. YES.

03:13PM 22 Q. AND SHE SAID THAT THIS DOCUMENT, AND SHE SAID THAT FOR

03:13PM 23 SEVERAL OF THEM, WAS AT A PERIOD OF TIME WHEN YOU WEREN'T DOING

03:13PM 24 THAT MUCH WORK FOR THERANOS.

03:13PM 25 DO YOU RECALL THAT?

03:13PM 1

A. YES.

03:13PM 2

Q. AND I THINK ONE WAS IN JANUARY OF 2015, ONE WAS IN MARCH
OF 2015.

03:13PM 3

03:13PM 4

AND MY QUESTION IS, WAS THERE ANY PERIOD WHEN YOU WERE
ACTUALLY DOING A LOT OF WORK FOR THERANOS?

03:13PM 5

03:13PM 6

A. THERE WAS NEVER A PERIOD WHERE I WAS DOING A SIGNIFICANT
AMOUNT OF WORK FOR THE COMPANY.

03:13PM 7

03:13PM 8

Q. WHEN YOU SAW ON THESE DOCUMENTS LYNETTE SAWYER'S
SIGNATURE --

03:13PM 9

03:13PM 10

A. YES.

03:13PM 11

Q. -- DO YOU KNOW WHAT INFORMATION SHE WAS PROVIDED BEFORE
SHE SIGNED THE DOCUMENTS?

03:14PM 12

03:14PM 13

A. NO.

03:14PM 14

Q. DO YOU KNOW IF YOU RECEIVED A CERTAIN KIND OF DOCUMENTS,
LIKE LET'S SAY INVOLVING THERANOS LAB DEVELOPED TESTS --

03:14PM 15

03:14PM 16

A. RIGHT.

03:14PM 17

Q. -- BUT SHE RECEIVED A DIFFERENT KIND OF DOCUMENT, LIKE THE
CMS DOCUMENT THAT YOU SAW?

03:14PM 18

03:14PM 19

A. I WAS NOT MADE AWARE OF ANY OF THAT.

03:14PM 20

Q. SO YOU DON'T KNOW WHETHER THERANOS GAVE HER ONE TYPE OF
DOCUMENT AND YOU A DIFFERENT TYPE?

03:14PM 21

03:14PM 22

A. I DON'T KNOW.

03:14PM 23

Q. OKAY. AND YOU DON'T KNOW WHETHER SHE WAS GIVEN
INFORMATION AT THE TIME THAT SHE WAS ASKED TO SIGN THE
DOCUMENTS OR WHAT THAT INFORMATION WAS?

03:14PM 24

03:14PM 25

03:14PM 1 A. I DON'T KNOW.

03:14PM 2 Q. THERE WAS A DOCUMENT, AND IT WAS 10577 IF YOU WANT TO LOOK

03:14PM 3 IN THE BINDER. IT WAS THE DELEGATION OF RESPONSIBILITIES

03:14PM 4 DOCUMENT.

03:14PM 5 AND I THINK -- DO YOU RECALL THAT?

03:14PM 6 A. I'M LOOKING FOR IT. ONE SECOND, SIR.

03:15PM 7 YES.

03:15PM 8 Q. AND AM I RIGHT THAT YOU SIGNED THAT ONE IN SEPTEMBER OF

03:15PM 9 2015?

03:15PM 10 A. YES.

03:15PM 11 Q. SO YOU HAD BEEN LAB DIRECTOR FOR QUITE SOME TIME BY THEN;

03:15PM 12 IS THAT RIGHT?

03:15PM 13 A. YES.

03:15PM 14 Q. AND I THINK MS. WALSH GOT UP AFTER THE BREAK AND ASKED

03:15PM 15 YOU, HAD YOU BEEN DELEGATING SINCE YOU STARTED AT THERANOS.

03:15PM 16 DO YOU REMEMBER THAT QUESTION?

03:15PM 17 A. YES.

03:15PM 18 Q. AND HOW DID YOU ANSWER?

03:15PM 19 A. THE ASSUMPTION IS THAT YOU DELEGATE BECAUSE ALL OF THESE

03:15PM 20 JOBS HAVE TO BE DONE BY THESE VARIOUS PEOPLE, SO IT'S AN

03:15PM 21 ASSUMPTION THAT -- IT'S A NATURAL ASSUMPTION THAT YOU'RE GOING

03:15PM 22 TO DELEGATE.

03:15PM 23 Q. DR. DHAWAN, YOU READ MY MIND. I WAS GOING TO ASK YOU IF

03:15PM 24 YOU MADE AN ASSUMPTION. I WAS GOING TO ASK YOU IF YOU WERE

03:15PM 25 MAKING AN ASSUMPTION THAT YOU HAD, IN FACT, BEEN DELEGATING ALL

03:15PM 1 THAT TIME THAT YOU HAD WORKED THERE?

03:15PM 2 A. BECAUSE THAT'S USUALLY WHAT YOU DO WHEN YOU'RE A LAB

03:15PM 3 DIRECTOR.

03:15PM 4 Q. AND THEN JUST A FEW MORE QUESTIONS.

03:16PM 5 MS. WALSH SHOWED YOU SOME VERIFICATION DOCUMENTS, ONE

03:16PM 6 INVOLVING SOMETHING CALLED A DREW3?

03:16PM 7 A. YES.

03:16PM 8 Q. DO YOU REMEMBER THAT?

03:16PM 9 DO YOU KNOW WHAT DEVICE THERANOS WAS USING TO RUN OR TO

03:16PM 10 TEST CBC, COMPLETE BLOOD COUNTS?

03:16PM 11 A. TO VERIFY THE RESULTS? I'M SORRY, I DIDN'T GET THE LINE

03:16PM 12 OF QUESTIONING.

03:16PM 13 Q. DO YOU KNOW IF THERANOS WAS DOING CBC TESTS FOR PATIENTS

03:16PM 14 WHILE YOU WORKED THERE?

03:16PM 15 A. I DON'T RECALL.

03:16PM 16 Q. DO YOU KNOW WHAT DEVICE THEY WERE USING TO RUN CBC, IF

03:16PM 17 THEY WERE?

03:16PM 18 A. I DON'T RECALL AT THIS POINT.

03:16PM 19 Q. HOW ABOUT FOR TSH?

03:16PM 20 A. I DON'T RECALL.

03:16PM 21 Q. DO YOU KNOW IF THERANOS WAS RUNNING TSH BLOOD TESTS FOR

03:16PM 22 PATIENTS?

03:16PM 23 A. I'D HAVE TO LOOK BACK AT THE RECORDS. I DON'T RECALL.

03:16PM 24 Q. YOU DON'T HAVE A RECOLLECTION OF IT?

03:16PM 25 A. NO, I DO NOT.

03:16PM 1 Q. SO IS THE SAME TRUE THAT YOU DON'T KNOW WHICH DEVICE THEY
03:16PM 2 WERE USING?

03:16PM 3 A. I DO NOT KNOW.

03:16PM 4 Q. AND HOW ABOUT WOULD -- WOULD THE SAME ANSWER BE FOR ANY
03:16PM 5 ASSAY? IF I ASKED YOU ABOUT ANY ASSAY, WOULD YOU SAY YOU DON'T
03:17PM 6 RECALL?

03:17PM 7 A. I DON'T RECALL BECAUSE I WAS NEVER TOLD THIS INFORMATION.

03:17PM 8 Q. OKAY. YOU -- MS. WALSH ASKED YOU ABOUT THE TOUR THAT YOU
03:17PM 9 TOOK, AND I THINK YOU SAID THAT YOU FOUND IT INFORMATIVE.

03:17PM 10 A. YES.

03:17PM 11 Q. AND WHAT DID YOU FIND INFORMATIVE ABOUT IT?

03:17PM 12 A. JUST THE VAST ARRAY OF MACHINES THAT THEY WERE USING.

03:17PM 13 Q. AND TELL ME MORE ABOUT THAT. DID THEY TELL YOU, THIS IS
03:17PM 14 THE PARTICULAR MACHINE TO USE FOR THESE TESTS, OR WHAT WERE --

03:17PM 15 A. THEY WEREN'T SPECIFIC.

03:17PM 16 Q. SO --

03:17PM 17 A. THEY JUST HAD A LARGE NUMBER OF MACHINES IN THE NEWARK
03:17PM 18 FACILITY.

03:17PM 19 Q. HELP ME UNDERSTAND THEN THE USE OF THE WORD "INFORMATIVE."
03:17PM 20 WHAT DID YOU LEARN?

03:17PM 21 A. I JUST LEARNED THAT THERE WERE A LARGE NUMBER OF MACHINES
03:17PM 22 IN THE FACILITY AND THAT THEY WERE USING SOME SIEMENS MACHINES
03:17PM 23 AND SOME OTHER DEVICES.

03:17PM 24 Q. I SEE. SO YOU WERE NOT CONNECTING THEM WITH ANY
03:17PM 25 PARTICULAR BLOOD TEST, YOU JUST SAW THERANOS'S INVENTORY?

03:17PM 1 A. EXACTLY.

03:17PM 2 Q. GOT IT.

03:17PM 3 IF WE COULD BRING UP EXHIBIT 4528, AND THEN PAGE 6.

03:18PM 4 YOUR HONOR, THIS HAS BEEN PREVIOUSLY ADMITTED.

03:18PM 5 THE COURT: YES.

03:18PM 6 BY MR. SCHENK:

03:18PM 7 Q. I THINK MS. WALSH WAS ASKING YOU IF YOU RECALL THAT

03:18PM 8 THERANOS HAD A LAB IN ARIZONA AND THAT DR. YOUNG WAS THE LAB

03:18PM 9 DIRECTOR IN ARIZONA.

03:18PM 10 DO YOU RECALL THAT LINE OF QUESTIONING?

03:18PM 11 A. YES.

03:18PM 12 Q. AND I THINK SHE EVEN SAID THAT THEY OPENED A LAB IN

03:18PM 13 ARIZONA TO SERVICE THE ARIZONA PATIENT SERVICE CENTERS.

03:18PM 14 DO YOU RECALL THAT?

03:18PM 15 A. YES.

03:18PM 16 Q. IN FACT, THOUGH, DOES THIS DOCUMENT SHOW YOU THAT SAMPLES

03:18PM 17 THAT WERE TAKEN IN ARIZONA WERE SOMETIMES SHIPPED TO YOUR LAB

03:18PM 18 IN CALIFORNIA?

03:18PM 19 A. THAT'S WHAT THIS DOCUMENT SAYS, THAT ALL THE HIGH

03:18PM 20 COMPLEXITY SAMPLES WERE SHIPPED OUT.

03:18PM 21 Q. SO THE LAB THAT DR. YOUNG SUPERVISED IN ARIZONA --

03:18PM 22 A. YES.

03:18PM 23 Q. -- DID NOT TEST ALL OF THE SAMPLES THAT WERE TAKEN FROM

03:18PM 24 PATIENTS IN ARIZONA; IS THAT RIGHT?

03:18PM 25 A. THAT'S WHAT THIS DOCUMENT WOULD SAY, YES.

03:18PM 1 Q. ALL RIGHT. THANK YOU.

03:18PM 2 NO FURTHER QUESTIONS, YOUR HONOR.

03:19PM 3 THE COURT: MS. WALSH?

03:19PM 4 MS. WALSH: YES.

03:19PM 5 **RECROSS-EXAMINATION**

03:19PM 6 BY MS. WALSH:

03:19PM 7 Q. DR. DHAWAN, ON THE SUBJECT OF SURAJ SAKSENA --

03:19PM 8 A. YES.

03:19PM 9 Q. -- MR. SCHENK POINTED OUT THAT THE DATE OF THAT
03:19PM 10 RECOMMENDATION LETTER THAT YOU SIGNED -- YOU SIGNED THAT
03:19PM 11 LETTER; RIGHT?

03:19PM 12 A. YES. I HAVE TO LOOK AT IT AGAIN, BUT YES.

03:19PM 13 Q. OKAY. THAT WAS IN 2015; RIGHT?

03:19PM 14 A. YES.

03:19PM 15 Q. OKAY. AND I'M GOING TO ASK YOU TO TURN IN YOUR BINDER TO
03:19PM 16 20466.

03:19PM 17 A. YES.

03:19PM 18 Q. TAKE A LOOK AT THAT EMAIL, WILL YOU?

03:20PM 19 A. YES.

03:20PM 20 Q. DOES THAT REFRESH YOUR RECOLLECTION AS TO WHEN DR. SAKSENA
03:20PM 21 WAS SEEKING TO BECOME QUALIFIED TO BECOME A LAB DIRECTOR?

03:20PM 22 MR. SCHENK: OBJECTION. IMPROPER REFRESH. THERE
03:20PM 23 WAS NO STATEMENT ABOUT A LACK OF KNOWLEDGE.

03:20PM 24 THE COURT: YOU NEED TO LAY A FOUNDATION.

03:20PM 25 MS. WALSH: OH. SURE. SURE. OKAY.

03:20PM 1 Q. DR. DHAWAN --

03:20PM 2 A. YES.

03:20PM 3 Q. -- DO YOU RECALL WHEN DR. SAKSENA BEGAN HIS PROCESS FOR

03:20PM 4 BECOMING QUALIFIED TO BECOME A LAB DIRECTOR AT A HIGH

03:20PM 5 COMPLEXITY LAB?

03:20PM 6 A. I WOULD HAVE TO REVIEW THE LETTER TO GET THE DATES AND ALL

03:20PM 7 OF THE INFORMATION THAT WAS ON THE LETTER, BUT, YES. I'D HAVE

03:20PM 8 TO LOOK AT THE LETTER AGAIN, YOU KNOW, THE LETTER THAT WAS

03:20PM 9 CREATED AND I HAD TO SIGN FOR HIM.

03:20PM 10 Q. OKAY. WE CAN DO THAT.

03:20PM 11 A. I MEAN, IT SAYS HERE 2014 IS WHEN HE STARTED SOME OF THE

03:21PM 12 PROCESS.

03:21PM 13 Q. OKAY. IF YOU WANT TO LOOK AT THE LETTER, WE CAN TURN BACK

03:21PM 14 TO THAT.

03:21PM 15 A. SURE. WHICH, WHICH ONE WAS THAT?

03:21PM 16 Q. 20064.

03:21PM 17 A. 20064.

03:21PM 18 Q. AND 20067 IS THE LETTER ITSELF.

03:21PM 19 A. SO IT'S APPARENTLY SINCE 2014 THAT HE WAS SEEKING TO DO

03:21PM 20 THIS, AND HE HAS THE JOB DESCRIPTION SINCE 2013.

03:21PM 21 SO HE'S HAD EXPERIENCE FOR THREE YEARS FROM 2013. SO

03:21PM 22 THOSE ARE THE DATES, 2013, 2014, 2015.

03:21PM 23 Q. OKAY. DOES THAT REFRESH YOUR RECOLLECTION AS TO WHEN HE

03:21PM 24 BEGAN?

03:21PM 25 A. YES, SO IT WAS THREE YEARS PRIOR.

03:21PM 1 Q. AND HE BEGAN IN 2014?

03:22PM 2 A. UM, LET ME LOOK AT THE LETTER AGAIN. I APOLOGIZE.

03:22PM 3 (PAUSE IN PROCEEDINGS.)

03:22PM 4 THE WITNESS: HE BEGAN IN 2014, YES.

03:22PM 5 BY MS. WALSH:

03:22PM 6 Q. OKAY. AND THAT WAS TO START THE PROCESS --

03:22PM 7 A. YES.

03:22PM 8 Q. -- OF BECOMING QUALIFIED; CORRECT?

03:22PM 9 A. YES, YES.

03:22PM 10 Q. OKAY. AND THEN MR. SCHENK ASKED YOU ABOUT THE STATEMENTS

03:22PM 11 IN THE LETTER THAT YOU WROTE -- THAT YOU SIGNED; RIGHT?

03:22PM 12 A. YES.

03:22PM 13 Q. AND YOU SAID YOU ASSUMED ALL OF THE STATEMENTS WERE TRUE;

03:22PM 14 CORRECT?

03:22PM 15 A. YES.

03:22PM 16 Q. AND THAT WAS -- YOU THOUGHT THAT WAS A REASONABLE

03:22PM 17 ASSUMPTION; RIGHT?

03:22PM 18 A. YES.

03:22PM 19 Q. YOU DIDN'T THINK DR. SAKSENA WAS LYING TO YOU ABOUT HIS

03:22PM 20 QUALIFICATIONS, DID YOU?

03:22PM 21 A. NO.

03:22PM 22 Q. OKAY. AND MR. SCHENK ASKED YOU MORE ABOUT YOUR

03:22PM 23 ASSUMPTIONS, YOUR ASSUMPTION ABOUT DR. ROSENDORFF BEING A

03:22PM 24 FULL-TIME EMPLOYEE.

03:22PM 25 DO YOU REMEMBER THAT?

03:22PM 1 A. YES.

03:22PM 2 Q. AND YOU SAID YOU HADN'T LOOKED AT HIS EMPLOYMENT RECORDS;

03:23PM 3 RIGHT?

03:23PM 4 A. YES.

03:23PM 5 Q. BUT IT WAS A REASONABLE ASSUMPTION FOR YOU TO BELIEVE HE

03:23PM 6 WAS A FULL-TIME EMPLOYEE, WAS IT NOT?

03:23PM 7 A. IT'S REASONABLE, YES.

03:23PM 8 Q. OKAY. AND THE ASSUMPTION THAT YOU WERE MAKING ABOUT

03:23PM 9 DELEGATING TO EMPLOYEES THAT THEY WOULD BE DOING THEIR JOBS, DO

03:23PM 10 YOU REMEMBER THAT?

03:23PM 11 A. YES.

03:23PM 12 Q. AND THAT WAS A REASONABLE ASSUMPTION; RIGHT?

03:23PM 13 A. YES.

03:23PM 14 Q. OKAY. AND MR. SCHENK ALSO ASKED YOU ABOUT THE PEOPLE TO

03:23PM 15 WHOM YOU DELEGATED. IT WAS THEIR JOB TO RAISE ISSUES TO YOU IF

03:23PM 16 THERE WERE ISSUES? HE ASKED YOU THAT QUESTION; RIGHT?

03:23PM 17 A. YES.

03:23PM 18 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THEY WEREN'T DOING

03:23PM 19 THEIR JOB IN THAT REGARD?

03:23PM 20 A. THERE WAS -- I HAD NO EVIDENCE THAT THAT WAS HAPPENING,

03:23PM 21 NO.

03:23PM 22 Q. OKAY.

03:23PM 23 YOUR HONOR, I HAVE ONE ITEM THAT I WANT TO CONSULT WITH

03:24PM 24 THE GOVERNMENT ON BEFORE I STEP DOWN.

03:24PM 25 THE COURT: OF COURSE.

03:24PM 1 (DISCUSSION OFF THE RECORD.)

03:24PM 2 MS. WALSH: YOUR HONOR, THERE WAS ONE EXHIBIT, 2219,
03:24PM 3 THAT I NOW OFFER INTO EVIDENCE, AND I UNDERSTAND THE GOVERNMENT
03:24PM 4 DOES NOT HAVE ANY OBJECTION.

03:24PM 5 MR. SCHENK: NO OBJECTION.

03:24PM 6 THE COURT: ALL RIGHT. THAT WILL BE ADMITTED AND IT
03:24PM 7 MAY BE PUBLISHED.

03:24PM 8 (GOVERNMENT'S EXHIBIT 2219 WAS RECEIVED IN EVIDENCE.)

03:24PM 9 MS. WALSH: AND MAY I HAVE ONE MOMENT, YOUR HONOR?

03:24PM 10 THE COURT: YES.

03:24PM 11 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

03:25PM 12 MS. WALSH: THANK YOU, YOUR HONOR. NO FURTHER
03:25PM 13 QUESTIONS.

03:25PM 14 THE COURT: OH, I'M LOOKING BEHIND YOU. SORRY.

03:25PM 15 MR. SCHENK.

03:25PM 16 MR. SCHENK: THANK YOU, YOUR HONOR.

03:25PM 17 **FURTHER REDIRECT EXAMINATION**

03:25PM 18 BY MR. SCHENK:

03:25PM 19 Q. DR. DHAWAN, MS. WALSH JUST ASKED YOU IF YOU HAD ANY REASON
03:25PM 20 TO DOUBT THAT INDIVIDUALS IN THE LAB WOULD RAISE ISSUES WITH
03:25PM 21 YOU, WERE WORKING HARD AND DOING THEIR JOB; IS THAT RIGHT?

03:25PM 22 AND I THINK YOU ANSWERED THAT, NO, YOU DIDN'T HAVE ANY
03:25PM 23 REASON TO DOUBT THAT; IS THAT CORRECT?

03:25PM 24 A. YES.

03:25PM 25 Q. WERE YOU SAYING THAT BASED ON JUST THE TIME THAT YOU WERE

03:25PM 1 WORKING AT THERANOS AS LAB DIRECTOR?

03:26PM 2 A. YES.

03:26PM 3 Q. I JUST WANT A YES OR NO TO THIS QUESTION.

03:26PM 4 AFTER YOU LEFT THERANOS, DOES THAT -- DID THAT CHANGE? DO

03:26PM 5 YOU NOW HAVE REASONS TO DOUBT?

03:26PM 6 MS. WALSH: OBJECTION.

03:26PM 7 MR. SCHENK: YOUR HONOR, THEY --

03:26PM 8 THE COURT: I THINK IT'S -- I THINK IT'S FAIR GAME

03:26PM 9 NOW. I DO.

03:26PM 10 SO YOU CAN ANSWER THE QUESTION.

03:26PM 11 THE WITNESS: CAN YOU REPHRASE? I'M SORRY, I WANT

03:26PM 12 TO MAKE SURE I GET THE PRECISE QUESTION.

03:26PM 13 BY MR. SCHENK:

03:26PM 14 Q. YES. YOU TOLD ME THAT YOU DIDN'T HAVE -- I THINK YOU TOLD

03:26PM 15 MS. WALSH THAT YOU DIDN'T HAVE ANY REASON TO DOUBT THE WORK OF

03:26PM 16 INDIVIDUALS WHO YOU DELEGATED TO, AND I JUST WANTED TO NAIL

03:26PM 17 DOWN THE TIME OF WHEN YOU HELD THAT BELIEF.

03:26PM 18 A. YES.

03:26PM 19 Q. IT SOUNDED TO ME LIKE YOU WERE SAYING, WHEN I WORKED AT

03:26PM 20 THERANOS, I DIDN'T HAVE ANY REASON TO DOUBT THAT.

03:26PM 21 AND I'M JUST WONDERING, YES OR NO, DID THAT OPINION CHANGE

03:26PM 22 AFTER YOU LEFT? SINCE YOU STOPPED BEING LAB DIRECTOR, DO YOU

03:26PM 23 NOW ACTUALLY HAVE REASON TO DOUBT THAT?

03:26PM 24 A. THE WORK OF THE INDIVIDUALS THAT WERE REPORTING UP, YOU

03:27PM 25 MEAN THE INDIVIDUALS THAT WERE, LIKE, LANGLEY GEE AND ALL OF

03:27PM 1 THOSE INDIVIDUALS?

03:27PM 2 Q. YEAH. I JUST WANT THE SAME QUESTION THAT MS. WALSH ASKED

03:27PM 3 YOU. SHE DIDN'T SPECIFY NAMES.

03:27PM 4 A. THERE'S DOUBT NOW, YEAH.

03:27PM 5 Q. THANK YOU.

03:27PM 6 NO FURTHER QUESTIONS.

03:27PM 7 MS. WALSH: NOTHING FURTHER.

03:27PM 8 THE COURT: ALL RIGHT. MAY THIS WITNESS BE EXCUSED?

03:27PM 9 MR. SCHENK: YES, YOUR HONOR.

03:27PM 10 MS. WALSH: YES, YOUR HONOR.

03:27PM 11 THE COURT: YOU'RE EXCUSED. THANK YOU, SIR.

03:27PM 12 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL TODAY?

03:27PM 13 MR. SCHENK: NO, YOUR HONOR.

03:27PM 14 THE COURT: ALL RIGHT. SHOULD WE THEN TAKE OUR

03:27PM 15 BREAK NOW AND THEN WE'LL RESUME AGAIN FRIDAY MORNING?

03:27PM 16 MR. SCHENK: YES, YOUR HONOR.

03:27PM 17 THE COURT: AND THE GOVERNMENT WILL HAVE A WITNESS.

03:27PM 18 ALL RIGHT. WELL, I PROMISED YOU 4:00 O'CLOCK, AND I'M

03:27PM 19 GOING TO DISAPPOINT YOU ONCE AGAIN.

03:27PM 20 WE'LL TAKE OUR EVENING BREAK NOW, LADIES AND GENTLEMEN.

03:28PM 21 ENJOY YOUR EVENING.

03:28PM 22 WE'LL SEE YOU AGAIN FRIDAY, THIS FRIDAY, PLEASE.

03:28PM 23 AND AGAIN, I REMIND YOU OF THE ADMONISHMENT, PLEASE DON'T

03:28PM 24 DO ANYTHING TO LEARN ANYTHING, DISCUSS, OR READ OR SEE ANYTHING

03:28PM 25 ABOUT THIS CASE DURING THE BREAK.

03:28PM 1 HAVE A GOOD BREAK, AND WE'LL SEE YOU FRIDAY MORNING.

03:28PM 2 THANK YOU.

03:28PM 3 (JURY OUT AT 3:28 P.M.)

03:28PM 4 THE COURT: PLEASE BE SEATED. THANK YOU.

03:28PM 5 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT FOR THE
03:28PM 6 DAY. ALL COUNSEL AND MR. BALWANI REMAIN.

03:28PM 7 JUST SCHEDULING FOR FRIDAY, IF I COULD JUST ASK THAT.

03:29PM 8 MR. SCHENK: YOUR HONOR, I THINK THE GOVERNMENT
03:29PM 9 HOPES TO CALL TWO INVESTORS ON FRIDAY. WE'LL HAVE THE FIRST
03:29PM 10 AVAILABLE AT 9:00 A.M.

03:29PM 11 THE COURT: OKAY.

03:29PM 12 MR. SCHENK: I'M NOT SURE WE'LL GET THROUGH BOTH
03:29PM 13 INVESTORS, BUT I'M NOT SURE THAT ONE WOULD FILL THE DAY, SO
03:29PM 14 WE'LL HAVE A SECOND TO AT LEAST START.

03:29PM 15 THE COURT: RIGHT. OKAY. THAT SOUNDS GOOD. OKAY.

03:29PM 16 ANYTHING FURTHER BEFORE WE BREAK FOR THE EVENING?

03:29PM 17 MR. SCHENK: YOUR HONOR, I OBJECTED ON AUTHENTICITY
03:29PM 18 GROUNDS, AND I DON'T WANT TO REVISIT THAT RULING, BUT I HAVE A
03:29PM 19 CONCERN THAT THIS IS GOING TO COME UP AGAIN.

03:29PM 20 AND WE COULD EITHER ADDRESS IT NOW OR WE CAN ADDRESS IT
03:29PM 21 LATER.

03:29PM 22 MY CONCERN IS THAT IT'S A LITTLE BIT TIME CONSUMING TO DO
03:29PM 23 IT WHILE WE HAVE THE JURY HERE, IT MIGHT NOT BE THE BEST USE OF
03:29PM 24 THEIR TIME. I'M NOT GOING TO PROVIDE MORE DETAIL, BUT MAYBE
03:30PM 25 SOME MORE DIRECTION FROM THE COURT IF THE COURT WOULD

03:30PM 1 APPRECIATE DISCUSSION ON IT OR NOT.

03:30PM 2 THE COURT: ARE YOU ASKING THAT WE REVISIT AN
03:30PM 3 OBJECTION HERE? OR LOOKING FORWARD IF THERE'S GOING TO BE SOME
03:30PM 4 AUTHENTICATION ISSUES REGARDING FUTURE EXHIBITS?

03:30PM 5 MR. SCHENK: YES, YOUR HONOR.

03:30PM 6 I'M NOT ASKING THE COURT TO REVISIT A PRIOR RULING. I
03:30PM 7 JUST THINK THAT THE SAME CIRCUMSTANCES MAY ARISE IN THE FUTURE,
03:30PM 8 AND I WONDER IF ADDITIONAL INFORMATION WOULD BE USEFUL FOR THE
03:30PM 9 COURT IN THE FUTURE.

03:30PM 10 THE COURT: SURE.

03:30PM 11 MR. SCHENK: BUT NO, NOTHING IN THE PAST.

03:30PM 12 THE COURT: OKAY. THANK YOU FOR THE HEADS UP.
03:30PM 13 ANYTHING?

03:30PM 14 MR. COOPERSMITH: I'M NOT REALLY SURE WHAT THE
03:30PM 15 OBJECTION IS. SO IF I HEAR WHAT IT IS, I CAN CERTAINLY ADDRESS
03:30PM 16 IT WHENEVER THE COURT PREFERS TO DO THAT.

03:30PM 17 THE COURT: I THINK IT WAS AUTHENTICITY IS WHAT WE
03:30PM 18 HEARD.

03:30PM 19 MR. COOPERSMITH: THE OBJECTION THAT I HEARD DURING
03:30PM 20 THIS LAST WITNESS, DR. DHAWAN, WAS --

03:30PM 21 THE COURT: I TURNED TO YOU TO SAY, IS THERE
03:30PM 22 ANYTHING ELSE YOU WANT TO RAISE BEFORE WE BREAK?

03:30PM 23 MR. COOPERSMITH: NO, NOTHING ELSE I WANT TO RAISE,
03:30PM 24 OTHER THAN I'M MYSTIFIED BY THE AUTHENTICATION OBJECTION WHEN
03:31PM 25 THE WITNESS AUTHENTICATED THE EMAIL ON THE WITNESS STAND.

03:31PM 1 THE COURT: MR. SCHENK SAID WE'RE NOT GOING BACK TO
03:31PM 2 THAT.

03:31PM 3 MR. COOPERSMITH: OKAY.

03:31PM 4 THE COURT: HE'S LIVING WITH MY RULING.

03:31PM 5 MR. COOPERSMITH: GOOD.

03:31PM 6 THE COURT: RIGHT. BUT GOING FORWARD, THERE MIGHT
03:31PM 7 BE SOME OTHER ISSUES REGARDING FUTURE EXHIBITS.

03:31PM 8 RIGHT?

03:31PM 9 MR. SCHENK: CORRECT.

03:31PM 10 THE COURT: RIGHT. SO IF YOU WANT TO TALK ABOUT
03:31PM 11 THOSE NOW, YOU ANTICIPATE THEM, I'M HAPPY TO DO THAT NOW IF YOU
03:31PM 12 WISH, IF YOU THINK THERE ARE GOING TO BE SOME ISSUES ABOUT
03:31PM 13 THEM.

03:31PM 14 MR. SCHENK: SURE. AND I'LL BE BRIEF, YOUR HONOR.

03:31PM 15 THE PARTIES REACHED A STIPULATION THAT COVERS EMAILS THAT
03:31PM 16 HAVE CERTAIN BATES NUMBERS.

03:31PM 17 THE DEFENSE HAS INTRODUCED EMAILS THAT HAVE NO BATES
03:31PM 18 NUMBERS, SO THEY'RE NOT COVERED BY THE STIPULATION.

03:31PM 19 IN FACT, BEFORE THIS WITNESS, THE DEFENSE SHARED A COUPLE
03:31PM 20 OF EXHIBITS WITHOUT BATES NUMBERS WITH THE GOVERNMENT, AND I
03:31PM 21 RAISED THIS EXACT OBJECTION AND SAID I HAVE CONCERNS ABOUT
03:31PM 22 THESE THREE EXHIBITS.

03:31PM 23 I WAS THEN TOLD, WE WILL NOT OFFER THOSE THREE.

03:31PM 24 I RESPONDED AND SAID, OKAY, BUT IF THERE ARE ANY OTHERS
03:32PM 25 WITHOUT BATES NUMBERS, I'D LIKE TO KNOW BECAUSE I WANT TO RAISE

03:32PM 1 THAT, AND I DIDN'T RECEIVE A RESPONSE, SO I ASSUMED THAT WAS
03:32PM 2 NOT GOING TO BE AN ISSUE, WHICH IS WHY I NOW BELIEVE THAT WE
03:32PM 3 SHOULD DISCUSS THIS BECAUSE I DON'T KNOW THAT I'M GOING TO GET
03:32PM 4 NOTICE THE NEXT TIME.

03:32PM 5 THE COURT: SURE. OKAY.

03:32PM 6 MR. SCHENK: AND HERE IS REALLY THE ISSUE:
03:32PM 7 AUTHENTICITY OF AN EMAIL I DON'T THINK IS SUFFICIENT IF THE
03:32PM 8 WITNESS JUST SAYS, I RECOGNIZE MY EMAIL ADDRESS ON IT.

03:32PM 9 I THINK THAT IS SUFFICIENT IF AUTHENTICITY IS ESTABLISHED.
03:32PM 10 THEN WE GET TO BUSINESS RECORDS OR OTHER EXCEPTIONS THAT WE
03:32PM 11 HAVE BEEN DOING IN THIS TRIAL.

03:32PM 12 BUT A WITNESS WHO, LIKE DR. DHAWAN, MAY HAVE ABSOLUTELY NO
03:32PM 13 RECOLLECTION OF SENDING OR RECEIVING THAT PARTICULAR EMAIL, I
03:32PM 14 THINK IT IS FAIR TO EXPECT MORE AUTHENTICATION PROVIDED THAN
03:32PM 15 JUST, THAT'S MY EMAIL ADDRESS AND I HAVE NO RECOLLECTION OF
03:32PM 16 SENDING OR RECEIVING THIS EMAIL.

03:32PM 17 I DO THINK THAT THE BAR FOR AUTHENTICITY IS HIGHER THAN
03:33PM 18 THAT, AND WE HAVE A STIPULATION FOR CERTAIN BATES NUMBERS, AND
03:33PM 19 WHEN THERE'S NO BATES NUMBER, WE JUST -- THERE'S NO STIPULATION
03:33PM 20 ON THAT ISSUE.

03:33PM 21 THE COURT: SURE. OKAY.

03:33PM 22 MR. COOPERSMITH: YOUR HONOR, I THINK THAT
03:33PM 23 AUTHENTICATION UNDER THE 900 SERIES OF THE FEDERAL RULES, AS
03:33PM 24 THE COURT KNOWS, CAN BE DONE IN A VARIETY OF WAYS.

03:33PM 25 SOMETIMES THERE'S A STIPULATION. THERE IS THAT FOR

03:33PM 1 CERTAIN DOCUMENTS.

03:33PM 2 IT ALSO CAN BE DONE BY ATTRIBUTES OF THE DOCUMENT, WHETHER
03:33PM 3 THE WITNESS RECOGNIZES HIS EMAIL SIGNATURE, WHETHER HE
03:33PM 4 RECOGNIZES THE PEOPLE ON THE EMAIL, THE CHARACTER AND NATURE
03:33PM 5 AND THE FORMAT OF THE DOCUMENT.

03:33PM 6 IT GOES ON AND ON. THERE ARE ALL SORTS OF WAYS THAT
03:33PM 7 AUTHENTICATION CAN BE ACCOMPLISHED.

03:33PM 8 ALL OF THESE WITNESSES, AS THE COURT RULED IN THE MOMENT,
03:33PM 9 WERE ABLE TO ACKNOWLEDGE THAT THIS WAS THEIR EMAIL, AND I THINK
03:33PM 10 THAT IN THAT SITUATION THEY'RE AUTHENTIC.

03:33PM 11 NOW, WHAT I THINK THE GOVERNMENT IS REALLY OBJECTING TO
03:33PM 12 HERE IS NOT THAT. I THINK THAT THEY SEE THAT THERE ARE SOME
03:34PM 13 DOCUMENTS THAT THE DEFENSE, THROUGH OUR DEFENSE INVESTIGATION,
03:34PM 14 WERE ABLE TO OBTAIN, THAT THEY DON'T HAVE.

03:34PM 15 AND THIS IS, THIS IS CROSS-EXAMINATION. WE DON'T HAVE AN
03:34PM 16 OBLIGATION TO PROVIDE IT TO THE GOVERNMENT UNDER RULE 16 WHEN
03:34PM 17 THEY'RE USED ON CROSS.

03:34PM 18 AND AS I SAID TO THE COURT BEFORE, IF WE DO HAVE DOCUMENTS
03:34PM 19 WE INTEND TO USE IN OUR CASE, WE WILL PROVIDE THEM TO THE
03:34PM 20 GOVERNMENT WHEN WE KNOW WE INTEND TO DO THAT UNDER THE RULES.

03:34PM 21 BUT THIS IS CROSS-EXAMINATION.

03:34PM 22 AND THE GOVERNMENT HAD YEARS OF OPPORTUNITY TO ISSUE GRAND
03:34PM 23 JURY SUBPOENAS AND WHATEVER THEY WANTED TO DO TO OBTAIN ANY
03:34PM 24 DOCUMENT THAT THEY WANTED, AND IF WE WERE ABLE TO OBTAIN SOME
03:34PM 25 THAT THEY DIDN'T, AND THEY DIDN'T HAVE THEM, YOU KNOW, THAT'S

03:34PM 1 JUST THE WAY THAT TRIAL GOES.

03:34PM 2 I DON'T THINK THIS AUTHENTICATION ARGUMENT IS ANYTHING
03:34PM 3 MORE THAN A FIG LEAF FOR SOME IRRITATION THAT THEY DIDN'T
03:34PM 4 COMPLETE THEIR INVESTIGATION OR GET EVERYTHING THEY THINK THEY
03:34PM 5 SHOULD HAVE GOTTEN.

03:34PM 6 BUT THIS IS NOT AN AUTHENTICATION ISSUE. THE RULED IN THE
03:35PM 7 MOMENT ON THE AUTHENTICATION, THE WITNESS WAS ABLE TO RECOGNIZE
03:35PM 8 THE EMAIL. THAT HAS HAPPENED EACH AND EVERY TIME THAT WE HAVE
03:35PM 9 INTRODUCED ONE OF THESE DOCUMENTS THAT MR. SCHENK IS
03:35PM 10 COMPLAINING ABOUT.

03:35PM 11 SO I DON'T KNOW IF THERE WILL BE MORE OF THIS. I GUESS IT
03:35PM 12 DEPENDS ON WHAT THE GOVERNMENT DOES ON DIRECT WITH ITS
03:35PM 13 WITNESSES AND WHAT CROSS WE MAY HAVE AND WHAT DOCUMENTS ARE
03:35PM 14 CALLED FORTH FOR IMPEACHMENT OR OTHER CROSS-EXAMINATION
03:35PM 15 PURPOSES.

03:35PM 16 AND I THINK THAT'S WHERE WE ARE.

03:35PM 17 THE COURT: ANYTHING FURTHER?

03:35PM 18 MR. SCHENK: MR. COOPERSMITH AVOIDED THE ISSUE BY
03:35PM 19 ALLEGING THAT THE GOVERNMENT IS ATTEMPTING TO USE 901 AS A
03:35PM 20 DISCOVERY TOOL. THAT ISN'T OCCURRING.

03:35PM 21 WHAT WE'RE TRYING TO DO IS HAVE SUFFICIENT INFORMATION SO
03:35PM 22 WE CAN SPEAK INTELLIGENTLY TO THE AUTHENTICITY OF AN EMAIL.

03:35PM 23 THAT'S WHY THE PARTIES ENTER INTO STIPULATIONS, BECAUSE
03:35PM 24 THEY BOTH FEEL THAT THEY UNDERSTAND A CERTAIN SET OF DOCUMENTS
03:35PM 25 IS AUTHENTIC AND IT ISN'T WORTH CHAIN OF CUSTODY OR SOME OTHER

03:35PM 1 ISSUE THAT COMES UP WITH AUTHENTICITY.

03:35PM 2 WE ENTERED INTO STIPULATIONS WITH REGARD TO THE EMAILS OR
03:35PM 3 DOCUMENTS THAT WE WERE FAMILIAR WITH.

03:36PM 4 AND THE FACT THAT THE DEFENSE HAS ADDITIONAL DOCUMENTS IS
03:36PM 5 NOT WHAT IS OF CONCERN TO THE GOVERNMENT. THE GOVERNMENT'S
03:36PM 6 CONCERN IS AUTHENTICITY.

03:36PM 7 AND IF THEY MEET THAT HURDLE, WE'RE NOT GOING TO OBJECT ON
03:36PM 8 AUTHENTICITY GROUNDS, BUT WE DO HAVE A CONCERN IF THE DOCUMENTS
03:36PM 9 DON'T HAVE THE RELIABILITY THAT THE BATES NUMBER PROVIDES THAT
03:36PM 10 LED TO THE STIPULATION, AND THAT'S WHY I RAISE IT NOW.

03:36PM 11 THE COURT: OKAY.

03:36PM 12 MR. COOPERSMITH: YOUR HONOR, TWO QUICK THINGS.

03:36PM 13 IN THE PAST WHEN THE GOVERNMENT HAS COMPLAINED ABOUT THIS
03:36PM 14 VERY ISSUE, AND I THINK IT'S AT LEAST TWO OTHER TIMES AT TRIAL
03:36PM 15 AND BEFORE TRIAL, IT'S ALWAYS BEEN FRAMED AS, YOU KNOW, SOMEHOW
03:36PM 16 WE HAVE AN OBLIGATION TO GIVE IT TO THEM.

03:36PM 17 NOW APPARENTLY THE GOVERNMENT HAS REALIZED THAT'S WRONG,
03:36PM 18 AND NOW THEY'RE MAKING A DIFFERENT OBJECTION.

03:36PM 19 BUT WHAT IT SOUNDS LIKE, EVEN THOUGH MR. SCHENK SAYS HE
03:36PM 20 WASN'T TRYING TO REVISIT THINGS THAT HAVE ALREADY OCCURRED, IT
03:36PM 21 SEEMS TO ME WHAT HE'S ARGUING IS THAT THE AUTHENTICATION THAT
03:36PM 22 WAS ESTABLISHED AND THE COURT RULED ON FOR THIS WITNESS AND
03:36PM 23 OTHERS BEFORE THAT IS SOMEHOW NOT SUFFICIENT.

03:36PM 24 AND I JUST DON'T THINK THAT'S TRUE. I THINK I AGREE WITH
03:37PM 25 THE COURT IN TERMS OF THE COURT'S RULING ON THESE MATTERS ON

03:37PM 1 AUTHENTICATION AS THESE DOCUMENTS HAVE ARISEN.

03:37PM 2 I'M CONFIDENT THAT THE COURT WILL MAKE SOUND RULINGS GOING

03:37PM 3 FORWARD ON THE SAME ISSUE, AND THAT IF THEY COME FORWARD, WE

03:37PM 4 WILL AUTHENTICATE THEM AS REQUIRED BY THE RULES, AND I'M

03:37PM 5 CERTAIN THEY'RE ENTITLED TO OBJECT IF THEY THINK THERE'S AN

03:37PM 6 OBJECTION.

03:37PM 7 THE COURT: ANYTHING FURTHER?

03:37PM 8 MR. SCHENK: NO.

03:37PM 9 THE COURT: THIS HAS BEEN HELPFUL. THANK YOU.

03:37PM 10 MR. COOPERSMITH: YOU'RE WELCOME.

03:37PM 11 THE CLERK: COURT IS ADJOURNED.

03:37PM 12 (COURT ADJOURNED AT 3:37 P.M.)

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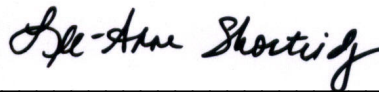
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 27, 2022